

No. 10945

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JAMES GOODWIN POWELL and
ANNA STRACHAN POWELL, husband and wife,
Appellants,

vs.

PETER J. WUMKES,
Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

FEB 17 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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*Page number appearing at foot of Certified Transcript.

District Court of the United States
Southern District of California
Central Division

No. 36,775-C Bkcy.

In the Matter of

JAMES GOODWIN POWELL and
ANNA STRACHAN POWELL,
husband and wife,

Debtor.

APPROVAL OF DEBTOR'S PETITION
and Order of Reference
(under Section 75 Bankruptcy Act)

At Los Angeles, in said District, on July 25, 1940, before the said Court the petition of James Goodwin Powell and Anna Strachan Powell, husband and wife, that they desire to effect a composition or an extension of time to pay their debts, and such other relief as may be allowed under the Act of March 3, 1933, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Fred Duffy, Esq., one of the Conciliation Commissioners in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said James Goodwin Powell and Anna Strachan Powell, husband and wife, shall attend before said Conciliation Commissioner on August 1, 1940, and at such time as said Conciliation Commissioner shall designate, at his office in San Bernardino, California, and shall submit to such or-

ders as may be made by said Conciliation Commissioner or by this Court relating to said matter.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on July 25, 1940.

(Seal)

R. S. ZIMMERMAN,
Clerk

By F. Betz
Deputy Clerk

[Endorsed]: Filed Jul. 25, 1940. [3]

[Title of District Court and Cause.]

AMENDED PETITION.

To the Honorable Paul J. McCormick, Judge of the District Court of the United States, for the District above set forth:

Your petitioners, the above named James Goodwin Powell and Anna Strachan Powell, would show unto your Honor, that they did on the 20th day of July, 1940 file in this Court, a petition under Section 75 of the Bankruptcy Act, as amended, which petition is still pending, that they have been unable to obtain acceptance of the majority in number and amount of all creditors, whose claims are affected by the composition and extension proposal, which they submitted at the First Meeting of Creditors, to the Conciliation Commissioner, appointed by this Court.

That as permitted by the first paragraph of Sub Section (s) Section 75 of the Bankruptcy Act, as amended, they

do hereby amend their petition heretofore filed on the 20th day of July, 1940 and they do substitute for the provisions of said petition as may be in conflict with this amendment, the contents of this amendment.

And They Pray that they may be adjudged a Bankrupt, that proceedings may be had in regard to any and all property in conformity with the law in regard to procedure under Sub Section (s) of Section 75 of the Bankruptcy Act, as amended.

That all their property wherever located, whether pledged, encumbered or unencumbered, be appraised; that the unencumbered exemptions and unencumbered interest or equity in their exemptions as prescribed by the law of the State of California, as set forth in the schedules heretofore filed in this matter, be set aside and set off to them; and that they be allowed to retain possession under the supervision and control of the Court, of any part or parcel or all of the remainder of property including their encumbered exemptions and pay for the same under the terms and [4] conditions of Sub Section (s) of Section 75 of the Bankruptcy Act, as Amended.

he Further Pray for all needful and lawful proceedings under the provisions of law which do become applicable on the filing of this petition and particularly those provisions contained in Sub Section (s) of Section 75 of the Bankruptcy Act, as Amended.

JAMES GOODWIN POWELL
ANNA STRACHAN POWELL

Petitioners

[Verified.]

[Endorsed]: Filed Oct. 24, 1940. [5]

[Title of District Court and Cause.]

CERTIFICATE OF CONCILIATION
COMMISSIONER

I, Fred Duffy, the Conciliation Commissioner of the above entitled Court, in and for the County of San Bernardino, do hereby certify that the Composition and/or Extension has failed, and I hereby make the following recommendation to the Honorable Judge of the above entitled Court, to-wit:

That James Goodwin Powell and Anna Strachan Powell be adjudicated *a* bankrupt under and pursuant to Section 75 (s) of the Bankruptcy Act.

Dated: October 23rd, 1940.

FRED DUFFY
FRED DUFFY,
Conciliation Commissioner for San Bernardino County,
California.

[Endorsed]: Filed Oct. 24, 1940. [6]

[Title of District Court and Cause.]

ADJUDICATION, ORDER OF REFERENCE, AND
TEMPORARY RESTRAINING ORDER

Under Section 75-s, Bankruptcy Act

At Los Angeles, in said District, on October 24, 1940 before said Court in Bankruptcy, the Petition of James Goodwin Powell and Anna Strachan Powell, husband and wife, debtors in the above-entitled matter, that they be adjudged *a* bankrupt under the terms and provisions of Section 75-s of the Bankruptcy Act, and within the true intent and meaning of the Acts of Congress relating to Bankruptcy, having been heard and duly considered, the said James Goodwin Powell and Anna Strachan Powell, husband and wife *is* hereby declared and adjudged *a* bankrupt accordingly.

It is thereupon ordered that said matter be referred to Fred Duffy, Esq., the Conciliation Commissioner for San Bernardino County, to act as Referee in Bankruptcy of this Court and to take such further proceedings therein as are required by said Acts; and that the said James Goodwin Powell and Anna Strachan Powell, husband and wife, shall attend before said Conciliation Commissioner, acting as Referee, at his office in San Bernardino, California, on October 31, 1940 at 10:00 o'clock a. m. and shall submit to such orders as may be made by said Conciliation Commissioner, acting as such Referee or by this Court relating to said matter in Bankruptcy.

And it is further ordered, adjudged and decreed that all creditors of the above-named bankrupt be and they are hereby enjoined and restrained from commencing or maintaining any judicial or official proceedings in any Court, or under the direction of any official against the said bankrupt or any of his property, and from proceeding with any sale of the Bankrupt's property under the terms of any Deed of Trust, until further order of this Court.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on October 24, 1940.

(Seal)

R. S. ZIMMERMAN,
Clerk,

By M. M. Karcher,
Deputy Clerk.

[Endorsed]: Filed Oct. 24, 1940. [7]

[Title of District Court and Cause.]

CERTIFICATE ON REVIEW OF CONCILIATION
COMMISSIONER'S ORDER OF JUNE 21st,
1944, DETERMINING VALUE OF REAL
PROPERTY.

I, Fred Duffy, Conciliation Commissioner of above entitled Court, for the County of San Bernardino, State of California, before whom above entitled matter is pending under proceedings pursuant to the provisions of Section 75 of the Bankruptcy Act, do hereby certify.

That above named debtors filed in the office of the clerk of above entitled court their petition under Section 75 of the Bankruptcy Act, on the 25th day of July, 1940. That said petition was approved and the matter referred to Fred Duffy, Esq., Conciliation Commissioner, as aforesaid for further proceedings.

That debtors having failed to secure acceptance of composition and/or extension proposal by a majority in number and amount of their creditors, did on the 14th day of October, 1940, filed in the office of said clerk, their Amended Petition under sub Section (s) of Section 75 of the Bankruptcy Act. Debtors were adjudicated and matter referred to said Fred Duffy, Conciliation Commissioner, acting as Referee, for further proceedings.

That certain proceedings were had thereon and on the 23rd day of December, 1942, said debtors filed in the office of said Conciliation Commissioner, their petition requesting reappraisal of hearing to determine value of debtors real property. That hearing was had on said petition on the 3rd day of March, 1943, after numerous

continuances had been granted and on the 9th day of April, 1943, Commissioner entered an order determining the value of said real property, that said order was vacated and set aside on review and appeal.

That on the 2nd day of May, 1944, rehearing on petition to determine value of debtors real property, came on for hearing before this Conciliation Commissioner, present at said hearing, were debtors, and [8] their attorney, H. R. Griffin, Petitioning Creditor, Peter J. Wumkes, and his attorneys, Nichols-Cooper & Hickson, by Donald P. Nichols.

Oral testimony and documentary evidence being introduced, the matter was submitted for decision.

That on the 26th day of May, 1944, this commissioner rendered his decision and on the 14th day of June, 1944, findings of fact and conclusions of law, were filed and said findings of fact and conclusions of law were signed by said commissioner, on the 21st day of June, 1944. And on said 21st day of June, 1944, Order determining value was signed and entered by this commissioner.

That on the 30th day of June, 1944, petition for review of order determining value of debtors real property was filed by petitioning creditor in the office of said commissioner.

That the real property of debtors, subject of this certificate on review, consists of 5.78 acres of citrus property with no improvements on the land except the citrus trees.

That at the request of petitioning creditor, on review, I am attaching hereto a copy of the so called Stay and

rental order, bearing date the 16th day of June, 1941, and a copy of a report furnished petitioning creditor, herein and his attorneys, dated November 3rd, 1943.

It should be remembered that the proceeds shown by the report so furnished, represented the proceeds from the crops raised on the property involved in this petition or certificate and also on another piece or parcel of citrus property, consisting of 4.02 acres on which another person held encumbrance.

I further certify that all orders of this court have been fully complied with by above named debtors, including the said order referred to as Rental Order.

Questions Presented.

The questions presented by petition for review are

I.

Is there substantial evidence to sustain the Findings of Fact, [9] Conclusions of Law and Order of Conciliation Commissioner fixing value of real property, on which petitioning creditor holds encumbrance, at \$5575.00.

II.

Is the encumbrance against real property controlling in determining value of said real property.

III.

Have debtors complied with the Orders of Conciliation Commissioner-Referee.

Papers Submitted.

For the Information of the Court, I am herewith submitting the following documents and exhibits.

1. Petition for reappraisal or hearing to determine value of debtors real property. (This petition was forwarded to the clerk of this court, attached to Conciliation Commissioner's certificate in a former review, and is now on file in the office of said clerk.)
2. Exhibits 4-8 and 9. (These exhibits are also part of the file in office of said clerk.)
3. Findings of Fact and Conclusions of Law.
4. Order determining value and Notice of entry of said Order.
5. Petition for Review of Order determining value of debtors real property.
6. Transcript of testimony taken at said hearing.
7. Decision of Conciliation Commissioner.
8. Copy of Report furnished Petitioning Creditor and Attorneys for petitioning creditor, dated November 3rd, 1943.
9. Copy of Order Setting Rentals, etc., dated June 16th, 1941.

Dated, San Bernardino, July 12th, 1944.

Respectfully submitted,

Fred Duffy FRED DUFFY

Fred Duffy,

Conciliation Commissioner-Referee.

[Endorsed]: Filed Jul. 14, 1944. [10]

[Title of District Court and Cause]

DECISION

This is the second hearing of Petition of Debtors to determine value of real property in the above entitled proceedings.

First hearing was held on 3rd day of March, 1943, rehearing granted and on the 2nd day of May, 1944, said rehearing held, before the undersigned Conciliation Commissioner.

Present at said hearing were debtors and their attorney, H. R. Griffin, Creditor, Peter J. Wumkes, and Nichols-Cooper & Hickson, by Donald P. Nichols, his attorney.

That in the course of said hearing of May 2nd, 1944, oral testimony and documentary evidence was introduced and the matter submitted for decision.

The documentary evidence consisting of exhibits 4—same being a plat of the property prepared by the witness and admitted at the former hearing on March 3rd, 1943, and exhibits 8 & 9, being photographs of property, made by witness, admitted in evidence at the former hearing of March 3rd, 1943. Said exhibits being now on file in the office of the Clerk of this Court.

The testimony presented by the debtors on said re-appraisal hearing of May 2nd, 1944, was by persons having had several years of experience in appraisals.

Charles Aubrey, who has been engaged in appraising lands for over 25 years in different parts of the United States, including the counties of Ventura, Los Angeles, Orange, Riverside, San Bernardino, and other [11] coun-

ties in the State of California, who has appraised property for New York Life Insurance Company, on farm lands, has appraised property for Federal Land Bank, appeared as witness on appraisals in Federal Court, has been supervisor of Farm Security Administration, considering all the elements for fixing value, gave as his opinion, the value of the property in question as \$5200.00.

W. H. Johnson, who has been in real estate and appraising business for over 20 years, was with the Redlands-Yucaipa Land Company, whose business was developing deciduous fruit land, subdivisions, operator of deciduous orchards for 30 years, has been appraiser on several occasions in the Superior Court, and this Court, after making a thorough study of the property in question, drawing a plat showing condition of trees situated thereon, taking photographs of trees and taking into consideration all the elements going to make up values in forming his opinion, places the market value of said property at \$5400.00.

We also have the testimony of J. W. Mehl, who now is and since 1931, has been Inheritance Tax Appraiser of the State of California, in and for the County of San Bernardino, has appraised considerable citrus property and other property during the 13 years as such Inheritance Tax Appraiser. This witness arrived at an appraisal of said property, based upon a consideration of all the elements which should enter therein, as \$5575.00.

Lyman M. King, a witness called on behalf of creditor, has been president of Redlands Federal Savings and Loan Association, since 1931. He formerly acted as State Inheritance Tax Appraiser, and did some appraisal work at that time, but as president of Redlands Savings & Loan

Association, (which he is now engaged in) does not go into the orange growing business particularly, they deal in houses and lots almost exclusively, his main business is loaning money on houses and does not involve lending of money on citrus groves, except occasionally when there might be a home on a citrus grove. He viewed the property in question four years ago and again on the 29th day of April, 1944. (Saturday afternoon) he [12] places the value of said property in the sum of \$11,912.50.

Fred Brock, witness on behalf of creditor, testified, that his business or occupation was orange growing and real estate and dry farming. That he had been engaged in real estate business since 1927, off and on during that time, that he owned some properties, that as a real estate broker has sold a number of properties, that he knows available purchasers for property in question, that he fixed the value of said property at the sum of \$12,000.00, with heating equipment, without heating equipment included he fixed the value at \$11,000.00, and knows an available purchaser for the property at that price, that he would be willing to guarantee a sale of said property at that price within a period of thirty days.

That no place in his testimony does he show where he has ever acted as appraiser for any organization, bank, corporation or individual, he testifies that buyers in most cases to-day, never question what the best production is, it is "can I have the property."

J. H. Nicholson, witness on behalf of debtors, testified that he is assistant secretary of the Redlands Heights Groves, and has been since 1927, that he is familiar with the property in question and gives as his opinion the

value of said property in the sum of \$6000.00, he said that, that is what it would be worth to him and that he, at that price, thinks he could work it out in a number of years. This witness does not show any experience as an appraiser.

Ted Pratt, called on behalf of creditor, testified that he works in the field for the Orange Belt Fruit Distributers of Pomona, who are packers and shippers and growers of citrus fruit, and has been in the position for three years. He was salesman of automobiles from 1930 to 1940, that he owns citrus properties, that his experience as an appraiser is in his present position to appraise crops and groves for the growers of his company, does not appraise for the purpose of sale or buying, but for company protection in advances on various crops. That he was on said property one time for a period of possibly two hours, that his visit to [13] said property was on May 1st, 1944, that he is licensed as growers service advisor, that the reasonable market value in his opinion of said property is \$21,000.00. When asked to explain what he meant by reasonable market value, he answered "—well, the use of the land for its most practical purpose and the value of the trees and water stock. It is not its potency, particularly, but its production. I investigated the crop record."

Peter J. Wumkes, called as a witness on behalf of himself, the creditor, testified that the property in question was of the value of somewhere between \$13,000.00 and \$15,000.00. Question

"Q. What, in your opinion, is the market value of this property?"

A. Well, I offered to take the property back—"

Another question.

“Q. Would you be willing to take this property and cancel the indebtedness that you hold against it?” Objected to and sustained.

It is not difficult to conclude what the answer of witness would have been had he been allowed to answer.

It is obvious from the testimony quoted, that this witness, Peter J. Wumkes, creditor and holder of encumbrance on the property in question, is desirous of regaining possession of said property.

Witness further testified that he had been in Redlands twice in nearly three years, had inspected the property on each occasion. First inspection on Thursday, April 29th, 1944, and again yesterday, which would be May 1st, 1944.

K. C. O'Bryan, witness called on behalf of creditor, testified that he was with the Southern Citrus Association, a packing house located in Redlands, and had been connected with said packing house for seven years. That he individually and as a partner is owner of seven parcels of citrus property, has known the property in question since 1936, at which time he was handling the fruit on said property, but does not remember when he last handled the fruit. Defines market value as—“I would think it would mean the price that a grove could be sold for and a buyer could be [14] found within a reasonable time.”

He does not testify that he has ever acted as appraiser or had any experience in appraisal work. He gives as

his opinion the value of the property in question, \$12,500.00. During his testimony he was asked

“Q. What, in your opinion, is the reasonable market value of that property?”

A. I think it is worth \$12,500.00, however, I come over here prepared to make an offer of \$10,000.00 for it, all cash.

“Q. So that your valuation without the crop at this time is \$9000.00?”

A. Yes, but I am willing to pay \$10,000.00 with the crop.”

“Mr. Nichols: Q. Are you prepared at this time to make a cash offer for the purchase of this property? A. I am.”

Objection interposed by attorney for debtors, following said objection

“Mr. Nichols: At this time I would like to offer proof by a cash offer and will tender proof of a cash offer in the amount of \$10,000.00, for this property and tender herewith cash in the amount of \$50 and a certified check in the amount of \$950, being ten percent of the amount of the offer. I am handing that over to you at this time, Mr. Duffy.”

After argument of counsel and ruling of commissioner, the objection to offer having been sustained, the following was addressed to the Court:

“Mr. Nichols: If you are refusing to entertain the offer in any way—

The Court: I have sustained the objection to the offer.”

Paragraph 3 of Sub Section (s) of Section 75 of the Bankruptcy Act, contains a proviso as follows:

“That upon request of any secured or unsecured creditor, or upon request of the debtor, the Court shall cause a reappraisal of the debtor’s property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the Court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor.” [15]

The second proviso provides:

“That upon request in writing by any secured creditor of creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction.

The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act.”

In view of the foregoing, this commissioner is constrained to the opinion, that the offer of purchase made by witness K. C. O’Bryan, was inadmissible.

No authority in the Act is given the court to sell the property of debtor except at public auction and that, only

after debtor has been given the opportunity to comply with the first proviso of paragraph, 3, supra.

Wright vs. Central Life Insurance Co., C. C. H. 52,826, decided by the Supreme Court of the United States on December 9th, 1940.

The court has also given its views on introduction of evidence on offer to purchase, in Sharp vs. United States, 191 U. S. 341, 48 Law. Ed. 211.

The testimony in the case at bar discloses a very wide difference of opinion as to the value of the property in question.

On the one hand we have witnesses on behalf of debtors, who have had years of experience in appraising real property, the nature of property involved here, including State Inheritance Tax Appraiser, of the county in which said property is situated, these witnesses arrive at their conclusions of value after viewing the property, testing the soil, preparing plat showing position of and condition of trees, taking photographs of trees and taking into consideration all the elements which enter into the determination of value.

On the other hand we have witnesses on behalf of creditor, which with one exception, have had no experience in appraisals, nor have they shown any knowledge of elements going to make up value, the exception is [16] Mr. King, who states, that his appraising does not involve citrus groves unless there might be a home on a citrus grove on which his company lends money.

After duly considering all the evidence adduced at the hearing, the reading of the transcript, considering the qualifications of witnesses produced, and being fully advised in the premises, I have reached the conclusion that the value of debtors property involved in this hearing, on which Peter J. Wumkes, creditor, has encumbrance, is of the value of \$5575.00.

Debtors may redeem said property by paying into the court, the said sum of \$5575.00, on or before three months from the date of the order fixing value is made.

Provided however, in case order fixing the value, is appealed from, debtors may redeem said property by paying into court, the said sum of \$5575.00, on or before three months from the date order on appeal, becomes final.

Attorney for petitioning debtors will prepare appropriate Findings, Conclusions and Order.

Dated, San Bernardino, California, this 26th day of May, 1944.

Fred Duffy FRED DUFFY
Fred Duffy,

Conciliation Commissioner-Referee.

[Endorsed]: Filed Jul. 14, 1944. [17]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The Petition of the above-named debtors requesting a court reappraisal or hearing to determine value of debtors' real property having been duly filed on to-wit, the 23rd day of December, 1942, after several continuances, was first heard on the 3rd day of March, 1943, and now pursuant to the Order of the District Court, affirmed by the Circuit Court, comes on regularly for hearing after due and regular notice being given, on the 2nd day of May, 1944, at the hour of 10:00 a. m. thereof, before the Honorable Fred Duffy, Conciliation Commissioner of the above-entitled Court, in and for the County of San Bernardino, State of California, and there appearing said debtors personally and through their attorney, H. R. Griffin, Esq.; and Peter J. Wumkes, appearing personally and through his attorney, Nichols, Cooper & Hickson, by Donald P. Nichols, Esq.; and no appearance being made either in person or by counsel for any other creditor scheduled in the above proceeding; and evidence both oral and documentary having been introduced and witnesses examined on behalf of the debtors and the appearing creditors, and said hearing having been concluded and submitted, and the Court being fully advised of the law and the evidence in the premises, and after due consideration and deliberation thereon, makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

I.

The court finds that said debtors on or about the 25th day of July, [18] 1940, filed their joint Petition in the above-entitled court, praying for relief as provided for in Section 75 of the Bankruptcy Act; that the filing of said Petition was approved by the above-entitled court and referred to Fred Duffy, Esq., Conciliation Commissioner, for further proceedings.

II.

That on or about the 25th day of October, 1940, said petitioners having been unable to secure acceptance or confirmation of their extension proposal, filed their amended Petition and were adjudicated bankrupts in accordance with the provisions of Section 75(s) of the Bankruptcy Act, and that the above-entitled matter was referred to the Honorable Fred Duffy, Conciliation Commissioner, for further proceedings; and that thereafter and on the 16th day of June, 1941, said Honorable Fred Duffy, Conciliation Commissioner, made and entered an Order setting aside the exempt properties to said debtors, giving said debtors possession of their properties for a period of three years, and setting the rental to be paid by said debtors.

III.

That the court further finds that scheduled by said debtors in their schedules was the following described real property owned by said debtors and situated in the County of San Bernardino, State of California, and more particularly described as follows, to-wit:

That property in the City of Redlands, County of San Bernardino, State of California, described as:

That portion of the Northwest quarter (NW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section 21, Township 1 South, Range 3 West, San Bernardino Base & Meridian, described as:

Beginning on the North line of said Northwest quarter (NW $\frac{1}{4}$) of Southeast quarter (SE $\frac{1}{4}$) 1008.87 feet East of the Northwest corner of said Southeast quarter (SE $\frac{1}{4}$); thence South along the East line of land of Israel Beal, 853.33 feet to a point 466.67 feet North of the South line of said Northwest quarter (NW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$); [19] thence West 342 feet; thence North and parallel with first course herein, 853.33 feet; thence East 342 feet to beginning; Except that Portion conveyed to the Lugo Water Company by Deed recorded in Book 438 of Deeds, at page 384 described as follows: Commencing at the Northeast corner of the Southeast quarter (SE $\frac{1}{4}$) of said section; thence West along the center line of Lugonia Avenue, 1716 feet for point of beginning; thence South 0° 12' East 48 feet; thence West 55 feet; thence North 0° 12' West 48 feet; thence East 55 feet to the place of beginning. Together with Four (4) shares of the capital stock of Lugo Water Company, a corporation.

IV.

That the Court finds that on or about the 23rd day of December, 1942, the said petitioners filed their joint Petition requesting reappraisal or hearing to determine value of debtors' real property.

V.

That the Court further finds that the debtors' real property originally consisted of two parcels of land, each

adjoining the other and being planted to citrus, the one parcel of land being known as the Clark property having a small house, garage, and an unoccupied poultry building thereon, which said property has, in accordance with the Order of the Court, been redeemed by said debtors and is now their property. That the remaining parcel of land is the one encumbered with a Trust Deed in favor of the creditor, Peter J. Wumkes, and as described hereinabove, and consists of approximately five and seven-eighths (5-7/8) acres.

VI.

That the Court further finds that said parcel of land as described in Paragraph III hereof, is entirely planted to citrus containing approximately 798 trees, being divided as follows: approximately 95 young Valencia trees, being eight (8) to ten (10) years old, 399 old Valencia trees, and 304 Navel trees, including some five (5) Grapefruit trees; that these trees are set too closely together, being less than [20] twenty (20) feet apart, both for purposes of ready cultivation and also to permit access for sunlight; that this property has a gravelly soil and that as you travel from the front of said grove back towards the rear, there is to be noted increasing signs and indications that a stream or wash has traversed the rear of the grove, and this condition of the soil is reflected in the poor condition of the grove; there being a large number of stunted trees located particularly in the rear of said grove; that said entire grove is considered a marginal grove. That said grove is furnished with water, as represented by four (4) shares of Lugo Water.

VII.

That the Court finds that the production of citrus fruit is the highest and best use for said real property.

VIII.

The Court further finds that the grove has had proper care and attention and has been efficiently handled and that the poor condition of the grove is directly attributable to the poor condition of the soil and the spacing or planting of the trees upon the property. The Court further finds that the crop records are available and were introduced in the prior hearing before this Court.

IX.

That there has been picked in this year 1159 boxes of Navels and there is now an estimated number of 1500 boxes of Valencias on the grove, however, that the total crop produced last year was some 700 boxes.

X.

The Court further finds that there have been a number of sales made in that district within a recent period and under varying terms and conditions, which conditions and terms were dissimilar to the ones present in this case.

XI.

The Court further finds that during the course of this period a [21] witness testified that he considered the market value of the property to be \$12,500.00, including the crop, and that counsel for the Creditor, Peter J. Wumkes, then offered proof of a cash offer in the sum of \$10,000.00 for the property, tendering therewith cash

in the amount of \$50.00 and a certified check in the amount of \$950.00, being ten (10%) per cent of the amount of the offer; that said offer was held by the Court to be inadmissible, there being no authority given under the act to permit the Court to sell the property of the debtors, except at public auction and then only after the debtors had been given an opportunity to comply with the first provisions of Paragraph III of subsection (s) of Section 75 of the Bankruptcy Act and in accordance with *Wright vs. Central Life Insurance Company*, CCH 52,826, decided by the Supreme Court of the United States on December 9, 1940, and that also such an offer of purchase under the language of *Sharp vs. U. S.*, 191 U. S. 341; 48 Law. Ed. 211 is inadmissible and is at most indirect evidence of the opinion of the person making the offer, which opinion may have been based upon very slight knowledge, or a desire to purchase the land for some particular purpose disconnected from its value, or pure speculation and it is almost impossible to prove the lack of good faith of the person making the offer. The Court, therefore, found that said offer was impossible to complete and by reason of the law and the testimony of the witnesses was based upon pure speculation and that said offer was to purchase said property for a particular purpose; and further found that the element of good faith in said offer was very questionable and the Court thereupon rejected said offer.

XII.

The Court found that the total value of the Wumkes' property, which said property is hereinabove specifically described in Paragraph III hereof, and on which Jeter J. Wumkes has an encumbrance, is of the value of \$5,575.00.

Conclusions of Law

I. [22]

That the value of the Wumkes' property, as specifically described in Paragraph III of the Findings herein, and on which said Peter J. Wumkes has an encumbrance, is of the value of \$5,575.00.

II.

That said debtors may redeem said real property by paying into Court said sum of \$5,575.00 on or before three (3) months from the date of the Order fixing value is made; provided, however, in case the Order fixing value is appealed from, said debtors may redeem said property by paying into Court, the said sum of \$5,575.00 on or before three (3) months from the date said Order on Appeal, becomes final.

Dated this 21st day of June, 1944.

FRED DUFFY

Fred Duffy

Conciliation Commissioner-Referee.

[Endorsed]: Filed 6/14/44 at 45 min. past 11 o'clock a. m. Fred Duffy, Concil. Comm.

[Endorsed]: Filed Jul. 14, 1944. [23]

[Title of District Court and Cause.]

ORDER DETERMINING VALUE OF DEBTORS'
REAL PROPERTY

The Petition of the above-named debtors requesting a court reappraisal or hearing to determine value of debtors' real property having been duly filed on to-wit, the 23rd day of December, 1942, after several continuances, was first heard on the 3rd day of March, 1943, and now pursuant to the Order of the District Court, affirmed by the Circuit Court, comes on regularly for hearing after due and regular notice being given, on the 2nd day of May, 1944, at the hour of 10:00 a. m. thereof, before the Honorable Fred Duffy, Conciliation Commissioner of the above-entitled Court, in and for the County of San Bernardino, State of California, and there appearing said debtors personally and through their attorney, H. R. Griffin, Esq.; and Peter J. Wunkes appearing personally and through his attorney, Nichols, Cooper & Hickson, by Donald P. Nichols, Esq.; and no appearance being made either in person or by counsel for any other creditor scheduled in the above proceeding; and evidence both oral and documentary having been introduced and witnesses examined on behalf of the debtors and the appearing creditors, and said hearing having been concluded and the cause having been argued by respective counsel and submitted, and the court having duly made and entered its Findings of Fact and Conclusions of Law.

Now, Therefore. It Is Hereby Ordered, Adjudged and Decreed:

I.

That the value of the Wumkes' property is of the value of Five [24] Thousand Five Hundred Seventy-five (\$5,575.00) Dollars. Said property being and hereinafter more specifically described is the property on which the said Peter J. Wumkes has an encumbrance.

II.

That said debtors may redeem said real property by *pay* into Court said sum of \$5,575.00 on or before three (3) months from the date of the Order fixing value is made; provided, however, in case the Order fixing value is appealed from, said debtors may redeem said property by paying into Court, the said sum of \$5,575.00 on or before three (3) months from the date said Order on Appeal, becomes final.

III.

That said property upon which Peter J. Wumkes has an encumbrance is situate in the County of San Bernardino, State of California, and more particularly described as follows, to-wit:

That property in the City of Redlands, County of San Bernardino, State of California, described as:

That portion of the Northwest quarter (NW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section 21, Township 1 South, Range 3 West, San Bernardino Base & Meridian, described as:

Beginning on the North line of said Northwest quarter (NW $\frac{1}{4}$) of Southeast quarter (SE $\frac{1}{4}$) 1008.87 feet East of the Northwest corner of said Southeast quarter (SE $\frac{1}{4}$); thence South along the East line of land of Israel Beal, 853.33 feet to a point 466.67 feet North of the South line of said Northwest quarter (NW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$); thence West 342 feet; thence North and parallel with first course herein, 853.33 feet; thence East 342 feet to beginning; except that portion conveyed to the Lugo Water Company by Deed recorded in Book 438 of Deeds, at page 384 described as follows:

Commencing at the Northeast corner of the Southeast quarter (SE $\frac{1}{4}$) of said section; thence West along the center line of Lugonia Avenue, 1716 feet for point of beginning; thence South 0° 12' East 48 feet; thence West 55 feet; thence North 0° 12' West 48 feet; thence East [25] 55 feet to the place of beginning. Together with Four (4) shares of the capital stock of the Lugo Water Company, a corporation.

Dated this 21st day of June, 1944.

FRED DUFFY

Fred Duffy

Conciliation Commissioner-Referee.

[Endorsed]: Filed 6/21/44 at 15 min. past 10 o'clock a. m. Fred Duffy, Concil. Comm.

[Endorsed]: Filed Jul. 14, 1944. [26]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF "ORDER DETERMINING VALUE OF DEBTORS' REAL PROPERTY

Comes now, Peter J. Wumkes, secured creditor of the above named bankrupts, and the owner of the note and deed of trust covering certain of the bankrupts' real property, and files this Petition for Review of the Order of the Honorable Fred Duffy, Conciliation Commissioner of San Bernardino County, dated the 21st day of June, 1944, and entitled "Order Determining Value of Debtors' Real Property":

I.

Your petitioner alleges that he is the owner of a promissory note, executed by the debtors, and having a present unpaid balance in excess of \$13,000.00, which said promissory note is secured by a deed of trust shown in Schedule B(1) of the Schedules of the Bankrupts on file herein: that your petitioner has filed his proof of secured debt in these proceedings, which proof of debt has been duly approved and allowed.

II.

These proceedings were instituted on the 25th day of July, 1940, under Section 75 of the Bankruptcy Act, and thereafter, the matter was referred to Honorable Fred Duffy, Conciliation Commissioner of San Bernardino County. On or about the 25th day of October, 1940, the debtors in said proceeding filed their amended petition seeking to be adjudicated bankrupts, and said debtors were duly adjudicated bankrupts under the provisions of sub-section S of Section 75 of the Bankruptcy Act. Thereafter, and on or about the 16th day of June, 1941, the Conciliation Commissioner of San Bernardino County

made and entered his Order staying proceedings for a period of three years, and [30] setting as rental during such period, one-fourth of the gross proceeds of all agricultural income produced on the real property of the above named bankrupts, said rent to be paid annually, commencing June 16th, 1942. Your petitioner has not received any rent whatever pursuant to said rent order, either from the Conciliation Commissioner or the bankrupts, and in that connection, petitioner alleges on information and belief that the said rent order has not been honored with compliance, and is now in default, and has at all times mentioned herein, been in default.

III.

On or about the 23rd day of December, 1942, the bankrupts filed a petition with the Conciliation Commissioner of San Bernardino County, requesting a hearing to determine the value of the real property set forth in their Schedule, and upon which your petitioner held an encumbrance in the form of the deed of trust hereinbefore described. Said matter was determined in the month of March, 1943, and thereafter, a review was taken by your petitioner, resulting in a reversal of the Order of the Conciliation Commissioner made in March of 1943, and the affirmance of said reversal by the Ninth Circuit Court of Appeals following an appeal of said reversal by the bankrupts. Said matter came on for hearing pursuant to the Order of the District Court reversing the former decision of the Conciliation Commissioner of San Bernardino County on the 2nd day of May, 1944, before the Honorable Fred Duffy, Conciliation Commissioner of said County, and thereupon evidence was introduced before the Conciliation Commissioner showing the value of the real property to have been approximately \$12,000.00,

and your petitioner personally values the said property between \$13,000.00 and \$15,000.00, but that the Conciliation Commissioner has made an Order permitting the bankrupts to obtain the said real property, free and clear of your petitioner's encumbrance, by paying the sum of \$5,575.00. Petitioner hereby refers to the Order and Findings made by the Conciliation Commissioner of San Bernardino County, and by such reference [31] includes the same herein, as if set forth in this petition verbatim.

IV.

That the Order of the Conciliation Commissioner of San Bernardino County is contrary to the evidence and against law and constitutes the taking of petitioner's property without due process of law, and without adequate compensation therefor. Your petitioner alleges that his rights have been violated in the Findings and Order made by the Conciliation Commissioner holding the property to have a value of \$5,575.00, and that, in truth and in fact, the said property has a value of at least \$12,000.00. Your petitioner alleges that his rights have been violated, in that the Order of the Conciliation Commissioner attempts to give to the bankrupts herein the right to obtain the property, free and clear of your petitioner's encumbrance, having a present balance in excess of \$13,000.00, for the sum of \$5,575.00, when, in truth and in fact, the property has a value of at least \$12,000.00. Your petitioner alleges that his rights have been violated, in that the Findings and Judgment made by the Conciliation Commissioner of San Bernardino County result in a gross miscarriage of justice, and result in the taking of petitioner's property without adequate compensation therefor, and in violation of the Due Process Clause of the

United States Constitution. Your petitioner alleges that his rights have been violated, in that the Findings and Decision of the Conciliation Commissioner of San Bernardino County are contrary to the evidence of value introduced before him at said hearing, and are based upon improper conclusions drawn from such evidence, and upon evidence of value based upon inadequate and improper factors in determining value.

V.

Your petitioner requests that a Certificate of Review be prepared by the Conciliation Commissioner of San Bernardino County, and that he transmit with such Certificate of Review, the original Findings and Order herein sought to be reviewed, the original transcript of testimony, prepared and now in the hands of said Conciliation Commissioner, [32] the Order for the payment of rent dated June 16, 1941, and this Petition for Review.

Petitioner prays that the Order of June 21, 1944 be reviewed, in accordance with the provisions of the Bankruptcy Act, and upon such review, that said Order be amended, modified or set aside, as to the Court may seem meet and equitable.

Dated: June 30, 1944.

PETER J. WUMKES,

Petitioner

By Nichols, Cooper & Hickson and
C. P. Von Herzen,

his attorneys,

By Donald P. Nichols

Donald P. Nichols.

[Verified.]

[Endorsed]: Filed 6/30/44 at 30 min. past 10 o'clock
a. m. Fred Duffy, Concil. Comm.

[Endorsed]: Filed Jul. 14, 1944. [33]

[Title of District Court and Cause.]

NOTICE OF HEARING OF CONCILIATION
COMMISSIONER'S CERTIFICATE ON RE-
VIEW

To Nichols, Cooper & Hickson, and C. P. Von Herzen,
Attorneys for Petitioner on Review; and H. R. Grif-
fin, Attorney for Bankrupts:

You, and each of you, will please take notice that on
the 18th day of September, 1944, at the hour of 10 o'clock
a. m., or as soon thereafter as counsel can be heard, a
hearing will be had before the Hon. Paul J. McCormick,
in his court room No. 8, in the Federal Building, Los
Angeles, California, on the Conciliation Commissioner's
Certificate on Petition for Review of Order Determining
Value of Debtors' Real Property, filed with the Clerk of
the above entitled Court on July 14, 1944.

Dated: September 6, 1944.

EDMUND L. SMITH,
Clerk

By E. M. Enstrom, Jr.
E. M. Enstrom, Jr.,
Deputy Clerk.

Mailed copies of notice to above-named counsel & Fred
Duffy, Conciliation Commissioner on 9-6-44. E. M. En-
strom, Jr., Deputy.

[Endorsed]: Filed Sep. 6, 1944. [34]

[Title of Cause.]

AFFIDAVIT IN RE APPRAISAL OF PROPERTY

State of California

County of Los Angeles—ss

Donald D. Wyllie, being first duly sworn, deposes and says:

That he is engaged in the business of packing and shipping of citrus fruits; that he has lived in the Redlands citrus district for the past twenty years; that during recent years he has bought and sold two groves in the general vicinity of the grove owned by James Goodwin Powell and Anna Straechan Powell upon which Peter J. Wumkes holds a note secured by Deed of Trust; that he is familiar with recent purchases and sales of citrus properties in the vicinity of the Powell grove; that he has, within the past ten days, appraised the property of Mr. and Mrs. Powell consisting of approximately 5.7 acres of land being improved with 798 citrus trees of which 494 are valencias and 304 navels; that he is familiar with the value of properties in the immediate locality of the Powell property and is also familiar with the value of the Powell property as it has existed during the past six months.

That based upon said experience and familiarity with the market value of citrus properties in the vicinity of the Powell grove, this affiant fixes the reasonable value of

said property at the sum of \$13,000.00; that there is at the present time, set upon said property, a crop which affiant estimates to be approximately 3,000 boxes; that based on the assumption that the fruit will bring prices equivalent to the existing ceiling, affiant estimates the present crop now on said property, to return between \$5,000.00 and \$5,500.00.

That affiant is familiar with demands for citrus properties and knows of numerous available purchasers for said property and alleges the fact to be that said property can be sold at forced sale for the sum of \$9,000.00.

Dated this 16th day of September, 1944.

DONALD D. WYLLIE

Affiant

Subscribed and sworn to before me this 16th day of September, 1944.

(Seal)

Alice M. Kesterson

Notary Public in and for said County and State.

[Endorsed]: Filed Sep. 23, 1944. [35]

[Title of Cause.]

AFFIDAVIT IN RE APPRAISAL OF PROPERTY

State of California

County of Los Angeles—ss.

L. A. Turner, being first duly sworn, deposes and says:

That he is engaged in the business of growing, packing and shipping of citrus fruits; that he is the co-owner of approximately 500 acres of citrus properties; that in connection with the operation of his business, he has made hundreds of inspections and appraisals of citrus properties and is familiar with the market value of properties in the location of the James Goodwin Powell citrus property at Redlands, California.

That he is familiar with the value of the Powell property and knows of numerous persons interested in the purchase of said property; that the reasonable market value of said property is the sum of \$12,500.00.

That your affiant would be willing, upon the expectation of reselling said property immediately at a considerable profit, to offer at this time the sum of \$9,000.00 cash for the immediate purchaser of said property, and herewith makes such an offer.

Dated this 16th day of September, 1944.

L. A. TURNER

Subscribed and sworn to before me this 16th day of September, 1944.

(Seal)

Alice M. Kesterson

Notary Public in and for said County and State.

[Endorsed]: Filed Sep. 23, 1944. [36]

United States District Court
Southern District of California
Central Division

No. 36775-C Bankruptcy

In the Matter of

JAMES GOODWIN POWELL and
ANNA STRACHAN POWELL,
husband and wife,

Debtors.

MINUTE ORDER

The objections of farmer-debtors to the affidavits of Donald D. Wyllie and L. A. Turner are overruled and said affidavits are filed and considered herein.

(Entered on Judge McCormick's Minutes September 23, 1944.) [37]

United States District Court
Southern District of California
Central Division

No. 36775-C Bankruptcy

In the Matter of

JAMES GOODWIN POWELL and
ANNA STRACHAN POWELL,
husband and wife,

Debtors.

MEMORANDUM AND RULING VACATING COM-
MISSIONER-REFEREE'S ORDER DETERMIN-
ING VALUE OF DEBTORS' REAL PROP-
ERTY.

Upon consideration of the entire record in this review we find that the commissioner-referee prejudicially erred in failing to consider evidence of other sales of comparable property and, particularly, in failing to consider evidence of a cash offer of \$10,000.00 for the property in question tendered during the hearing before the commissioner-referee to fix the value of the farmer-debtors' property pursuant to Section 75(s)(3) of the Act.

The proffered evidence of the cash offer of \$10,000.00 undoubtedly was one of the major factors supporting the petitioner's contention as to the market and fair value of the property in issue, and the action of the commissioner-referee wholly rejecting any consideration of this sub-

stantial and firm good faith commitment was clearly erroneous and shows that the issue of value has not been competently tried and determined. See *Kauk v. Anderson*, (C. C. A. 8), 137 F. 2d 233.

The error of law is sufficiently disclosed by the record transmitted by the commissioner-referee with his certificate and decision, but the serious and unfair aspect of the value fixed by the commissioner-referee is manifested by further evidence submitted by affidavits offered at the hearing of this review before the judge. Such evidence is properly receivable and the objections of the farmer-debtor to it are overruled. *Carter v. Kubler*, 320 U. S. 243; *Powell v. Wumkes*, (C. C. A. 9), 142 F. 2d 4; *Rhodes v. Federal Land Bank*, (C. C. A. 8), 140 F. 2d 612; General Order 47, Title 11 U. S. C. A., page 115.

The conciliation commissioner-referee's findings of fact XI, the conclusions of law and the order of the conciliation commissioner-referee determining value of debtors' real property, dated June 21, 1944, are vacated, set aside and annulled. Inasmuch as the competent evidence [38] pertinent to properly redetermining the value of farmer-debtors' property is more readily and economically producible before the conciliation commissioner-referee than before this court, this entire matter is recommitted to Conciliation Commissioner Referee Duffy of San Bernardino, California, with instructions to, with reasonable celerity set for hearing upon appropriate notice and with dispatch to conduct the hearing and determine the fair value of

farmer-debtors' property involved, in accordance with the views expressed in this memorandum and pursuant to law. Exceptions allowed.

Dated September 23, 1944.

PAUL J. McCORMICK
United States District Judge.

Judgment entered Sep. 23, 1944. Docketed Sep. 23, 1944. Book 28, page 131. Edmund L. Smith, Clerk, by B. B. Hansen, Deputy.

Notation made in Bankruptcy Docket on Sep. 23, 1944 pursuant to Rule 79(a), Civil Rules of Procedure. Edmund L. Smith, Clerk U. S. District Court, Southern District of California, by B. B. Hansen, Deputy.

[Endorsed]: Filed Sep. 23, 1944. [39]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the United States Circuit Court of Appeals for the Ninth Circuit Court for Rule 73(b).

Notice is hereby given that, James Goodwin Powell and Anna Strachan Powell, husband and wife, debtors in the above bankruptcy proceeding, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment of the Honorable Paul J. McCormick, Judge of the United States District Court, made, entered and filed in the records of the above said Court on the 23rd day of September, 1944, vacating, setting aside and annulling the Conciliation Commissioner-Referee's Finding of Fact XI, the Conclusions of Law, and the Order of the Conciliation Commissioner-Referee determining value of Debtor's real property, dated June 21, 1944, and from each of them.

Dated this 19th day of October, 1944.

H. R. GRIFFIN

Attorney for Debtors and Appellants.

Notice is further given that the parties interested in this Appeal are Peter J. Wumkes, represented by Messrs. Nichols, Cooper & Hickson, 412-418 First National Bank Building, Pomona, California, and C. P. Von Herzen, 453 South Spring Street, Los Angeles, California, Attorneys at Law.

[Endorsed]: Filed Oct. 19, 1944 & mailed copy not. of appeal to Nichols, Cooper & Hickson & C. P. Von Herzen. [40]

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Know All Men by These Presents, that the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Peter J. Wumkes, in the penal sum of Two Hundred Fifty and No/100 -- Dollars (\$250.00), to be paid to the said Peter J. Wumkes, his successors or assigns, or legal representatives, for which payment well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The Condition of the Above Obligation Is Such, that

Whereas, Jamed Goodwin Powell and Anna Strachan Powell, husband and wife, have appealed, or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an Order and Judgment of the Honorable Paul J. McCormick, Judge of the United States *Circuit* Court, made, entered and filed in the records of the above said Court on the 23rd day of September, 1944, vacating, setting aside and annulling the Conciliation Commissioner-Referee's Findings of Fact XI, the Conclusions of Law, and the Order of the Conciliation Commissioner-Referee determining value of Debtors' real property, dated June 21, 1944, and from each of them, in the above, entitled action.

Now, Therefore, if the above named Appellants, James Goodwin Powell and Anna Strachan Powell, husband and wife, shall prosecute said appeal to effect and answer all costs which may be adjudged against them if the appeal is dismissed, or the Order affirmed, or such costs as the Appellate Court may award if the Order is modified, or in any other event, then this obligation shall be void; otherwise to remain in full force and effect. [41]

It Is Hereby Agreed by the Surety that in case of default or contumacy on the part of the Principals or Surety, the Court may, upon notice to them of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation, and award execution thereon.

Signed, sealed and dated this 19th day of October, 1944.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

By Robert Hecht
Robert Hecht—Attorney in Fact

(Seal) Attest S. M. Smith
S. M. Smith—Agent

H. R. GRIFFIN
Attorney

Approved this day of, 1944.

.....

State of California,
County of Los Angeles—ss:

On this 19th day of October, 1944, before me, Theresa Fitzgibbons, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Robert Hecht known to me to be the Attorney-in-Fact and S. M. Smith known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as Attorney-in-Fact and Agent, respectively.

(Seal)

THERESA FITZGIBBONS

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires May 3, 1946.

The premium charged for this bond is \$10.00 Dollars per annum.

[Endorsed]: Filed Oct. 19, 1944. [42]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between H. R. Griffin, Esq., attorney for James Goodwin Powell and Anna Strachan Powell, husband and wife, as Debtors, and Messrs. Nichols, Cooper & Hickson and C. P. Von Herzen, Esq., attorneys for Peter J. Wumkes, that, in addition to the record as shown by the transcripts and other documents that the debtors James Goodwin Powell and Anna Strachan Powell admitted at the oral argument before Judge Paul J. McCormack, that the creditor, Peter J. Wumkes, had received nothing since the original filing of the debtors' petition in this proceeding, and that the record on appeal may include this stipulation.

Dated: December 11th, 1944.

H. R. Griffin,

H. R. Griffin,

Attorney for Debtors and Appellants.

Messrs. Nichols, Cooper & Hickson and
C. P. Von Herzen,

By: C. P. Von Herzen

C. P. Von Herzen

Attorneys for Creditor and Respondent.

It is so ordered.

Ben Harrison

Judge

[Endorsed]: Filed Dec. 12, 1944. [49]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 49 inclusive contain full, true and correct copies of Debtors' Petition under Section 75 of the Bankruptcy Act; Approval of Debtors' Petition and Order of Reference; Amended Petition; Certificate of Conciliation Commissioner; Adjudication, Order of Reference and Temporary Restraining Order; Certificate on Review of Conciliation Commissioner's Order of June 21st, 1944 Determining Value of Real Property; Decision; Findings of Fact and Conclusions of Law; Order Determining Value of Debtor's Real Property; Debtors' Exhibits 4, 8 and 9; Petition for Review of Order Determining Value of Debtors' Real Property; Notice of Hearing of Conciliation Commissioner's Certificate on Review; Affidavit of Donald D. Wyllie in re Appraisal of Property; Affidavit of L. A. Turner in re Appraisal of Property; Minute Order Entered September 23, 1944; Memorandum and Ruling Vacating Commissioner-Referee's Order Determining Value of Debtors' Real Property; Notice of Appeal; Undertaking for Costs on Appeal; Statement of Points on Appeal; Designation of Portions of Record to be Contained in Record on Appeal; Affidavit of Mailing; Stipulation and Order re use of Original Reporter's Transcript; Affidavit; Order Extending Time to

Docket Appeal and Stipulation and Order filed December 12, 1944, which, together with Original Reporter's Transcript transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$19.55 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 15 day of December, 1944.

[Seal]

EDMUND L. SMITH,
Clerk

By Theodore Hocke
Deputy Clerk.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT.

The above entitled matter coming on regularly for hearing on May 2, 1944, at 10 o'clock A. M., before Hon. Fred Duffy, Conciliation Commissioner, at San Bernardino, California, in Room 204 in the Katz Building, the petitioner being represented by Messrs. Nichols, Cooper & Hickson, by Don. P. Nichols, Esq., and C. P. Von Herzen, Esq., and the debtor being represented by H. R. Griffin, Esq., the following testimony and proceedings are had and taken.

Mr. Duffy: This is the time and place set for hearing to determine the value of real property of James Goodwin Powell and Anna Strachan Powell. Are you ready to proceed?

Mr. Nichols: We are ready.

Mr. Griffin: We are ready. [1*]

Mr. Duffy: Is it understood that because of the fact that your attorney, Mr. Von Herzen, is not here that you are still ready to proceed?

Mr. Nichols: We are ready to proceed.

Mr. Duffy: It is ordered that Paul C. Lynde is appointed Official Reporter to take the testimony and transcribe the same and furnish a copy to the Court. The parties in interest may make their own arrangements for copies.

CHARLES AUBREY,

called as a witness by the debtor, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin: Q. State your name.

A. Charles Aubrey.

Q. Where do you reside, Mr. Aubrey?

A. In Riverside.

Q. What is your business or occupation?

A. Real estate and appraising.

Q. How long have you been in that business?

A. Well, in California since 1920.

Q. And prior to that time?

A. I did appraising in Western Kentucky and South-east Missouri in 1916, mostly for the New York Life Insurance on farm lands. [2]

Q. Have you been connected with any interests in this state?

A. Yes, I was an appraiser and on the loan committee for the Federal Land Bank in 1933 and 1934.

Q. That was in what portion of California?

A. Well, Ventura, Los Angeles and Orange Counties. I did not do any land bank appraising in this county at that time.

Q. Have you held any other positions relative to appraising?

A. In 1925 I began with the Farm Security Administration Supervisor of this county in which I had charge of the tenant purchase, and in San Bernardino County I think there was about 10 or 12 farms bought over in

(Testimony of Charles Aubrey)

Chino Valley, and then after resigning from that position a couple of years ago I have appraised about—well, more than 30 cases in this county for this court.

Q. Have you ever appeared as appraiser before the Federal Court?

A. Yes, a great many times.

Q. Have you appeared before any other courts as appraiser?

A. I don't think any other Federal court. I was on the Drainage District in Orange County. That case was heard before Judge Yankwich, and the Santa Ana Gardens Tract—I think that was Judge Stephens at that time.

Q. When you speak of your connection with the farms [3] Security Administration, was that for San Bernardino County only, or did it also include Riverside?

A. I worked in three counties, but I was really Supervisor for San Bernardino County. I also worked for—I worked up north on appraisals in San Joaquin County and also Visalia in some cases.

Q. Has your appraisals dealt with citrus properties?

A. Yes. The majority of them have been citrus.

Q. What is your present occupation?

A. Real estate and appraising.

Q. Are you familiar with the property which, for the purpose of this case we will describe as Wumkes Grove?

A. Yes, sir.

Q. How large a grove is that?

A. Well, it is assessed as 5.78 acres.

Q. Do you know whether it is improved or not?

A. Improved with orange trees; no buildings.

Q. It has no buildings on it? A. No.

(Testimony of Charles Aubrey)

Q. What is the nature of the trees that are on it?
You say they are orange trees? A. Yes.

Q. Do you know approximately how many trees?

A. Yes, according to my count, I have made a count there of 798 trees total.

Q. Can you tell us how those trees are divided as to kinds and ages?

A. Well, in the back of the grove, which would be the south side, there are [4] about 95 Valencia trees which look to be about 8 or 10 years old, but I have understood they are nearly twice that age. Then there is 399 large older Valencia trees and 304 Navel trees, but 5 of those 304 are grapefruit, and I think there is a seedling or two there, too.

Q. These 399 old Valencia trees, are they up toward the front of the grove? A. Yes.

Q. This property is in the City of Redlands, is it?

A. Yes, sir, in the city limits.

Q. Did you examine the soil on that particular grove?

A. I examined the soil back in January, 1943. I dug some holes in the soil.

Q. That was prior to your former testimony in this court, was it? A. Yes.

Q. You testified here in this court before on this matter? A. Yes, sir.

Q. Now, what did you find the nature of the soil to be?

A. Well, about half of the piece of land there is very gravelly and sandy sub-soil. In fact, in places it is very gravelly from the top clear down, which would indicate, and also according to the government soil map survey, that there has been a wash through there.

(Testimony of Charles Aubrey)

Q. Can you tell us approximately where that wash goes through, whether at the rear or the front of [5] the grove? A. At the rear.

Q. Is that where these 95 young Valencia trees are that you speak of? A. Yes, sir.

Q. Can you tell us anything about the manner or the way that these trees are planted or set out on the property?

A. Well, for the acreage in my opinion they are entirely too close. They are less than 20 feet apart. Where the trees have grown to any size they are mingled together a great deal and very hard to cultivate and I think it has been proven that trees can be too close together after they get certain sizes.

Q. Is there some standard of number of trees to the acre that you go by in determining this fact?

A. Yes, sir. I think trees should, in my opinion, should be at least around 24 feet apart and I have known of them being 30 feet at the San Joaquin Fruit Ranch in Orange County. That is a part of the Irvine Ranch.

Q. How many trees are usually, in good practice, planted to the acre on a citrus property?

A. I think the average distance is about 24 feet.

Q. Well, then, would you want to say at this time how many trees would ordinarily be in approximately 6 acres?

A. Well, there should not be more than around 500 trees. [6]

Q. And on this property there are approximately 798 trees, is that correct? A. Yes, sir.

(Testimony of Charles Aubrey)

Q. Would the setting of those trees have any effect upon the grove at all?

A. I don't quite understand your question.

Q. The fact that they were set so close, what effect would that have upon the grove?

A. Well, about the same effect as if you planted corn too close; it would require, naturally, more fertilizer and more care, the closer they are. More feed, in other words, for the land, and even at that it is hard—when they are crowded I think it is—it is also another effect there of being crowded.

Q. Can you explain to us the fact that they are crowded, what effect that has on their bearing qualities?

A. Well, the main object in being so close together, it is just—where it is thin soil, it is just almost impossible to get enough fertilizer into the soil to make the trees respond as they should. That has been my experience. Practically the same thing if a row of corn is planted about twice too thick. It will grow stalk but it does not bear.

Q. What would you say would be the best use that this property could be put to? What is it best adapted for?

A. Oh, I don't think there is any [7] question but what it is best adapted to citrus in that vicinity. It would be good vegetable land, especially the front side.

Q. Did you check into the amount of water that is available to the property?

A. Well, I don't know if I made any—it has four shares of Lugo Water Company, which, in my opinion, is adequate water.

(Testimony of Charles Aubrey)

Q. You say that is adequate?

A. I think so, yes, sir.

Q. After looking over the grove and considering all of these facts, did you come to any conclusion as to what the reasonable value of that property is at the present time? A. Yes, sir.

Q. What is your conclusion?

A. Well, I think it is worth \$5200 with the crop. As of January 28th, 1943, I estimated it at \$3900, and I think the actual increase in value will amount to a third higher than it was at that time. However, I would not say that the grove was worth a dime more. If I was appraising it for a 20 year amortized Land Bank loan I would reject it. It probably would qualify for a Commissioner loan, but not a Land Bank loan.

Mr. Griffin: Cross examine.

Cross-Examination

By Mr. Nichols: Q. I notice you keep referring to the comparison of this property with a [8] row of corn. Has most of your actual farming experience been with raising corn in the Middle West?

A. No, sir. I have raised some corn. I have farmed about and saw to farming about the first 30 years of my life.

Q. Have you ever owned a citrus grove?

A. Yes, sir, several of them.

Q. Where were they located?

A. The closest one to this vicinity was in the canyon back of Smiley Heights over in this County, 23 acres.

(Testimony of Charles Aubrey)

Q. Did you participate in the farming or taking care of that property?

A. Well, I had it done. I did the irrigating myself.

Q. Do you own any orange groves now?

A. No, sir.

Q. How long had you owned an orange grove?

A. I owned that grove 3 or 4 years until I saw it was a marginal producer.

Q. You say you went over this property yesterday?

A. Yes, sir.

Q. Did you notice any change in the property yesterday as compared to January, 1943?

A. Yes, it appeared to me that the trees are in a little better physical condition. He has obviously been taking care of it.

Q. So that the property now is in better condition than it was when you looked at it in January, 1943? [9]

A. I would say slightly, yes.

Q. What—would you say there has been any change in the demand for orange properties between January, 1943, and today?

A. Yes, sir, that is why I have added one third on it since then. That, together with the care that it has had.

Q. What factors actually caused you to increase the value of the property at the present time?

A. Because groves are actually selling some higher and because of the grove being in a little better physical condition.

Q. And were those the only elements that entered into your change in fixing the reasonable value of the property?

A. No, not the only elements that I would have in fixing the value of the property.

(Testimony of Charles Aubrey)

Q. I am referring to the change.

A. Yes, that would be the primary reason.

Q. Were there any other elements that entered into your change in the value today as compared with what your valuation was in January, 1943?

A. I think that would be my answer; yes, that is the reason.

Q. When you examined the property in 1943 in January it had a crop on it at that time, did it not?

A. Yes, sir.

Q. And did it have both the Navel and Valencia crop on it at that time?

A. I remember the crop [10] being very slight. I am not sure—I don't think I made any notes as to the crop that year only as to it being a very slight crop.

Q. You examined the property again yesterday and what did you observe with respect to the crop or oranges on the property?

A. The crop was much better.

Q. Did you form any opinion as to the number of boxes there were on the trees at this time?

A. No. I was not appraising necessarily for an estimate on the crop.

Q. Would that appraisal be affected in any way by the crop that was on the trees?

A. I don't think it would. Over a period of years that you investigate the crop production, the past 15 years, you will find, some years, very good crops, and the most of them very poor.

Q. In other words, the appraisal you made of this property was based on an appraisal over a period of

(Testimony of Charles Aubrey)

years and not on the actual cash value, or market value of the grove today? A. On both.

Q. If there was a \$3500 crop on the trees would that affect your appraisal of the property as you saw it yesterday?

A. I don't know that it would very materially because of the additional price now. I think I would average that with a period of years if I was going to appraise it for its fair worth today. [11] I think I would average that.

Q. In other words, when you appraised this property you considered it as a grove that would pay out over a period of years and on a basis of \$5200 you figured the grove would pay out over a period of years, is that correct?

A. Yes, it should be able to pay out at that.

Q. The price of \$5200, or the valuation of \$5200 that you place on this property did not in any way consider the crop that was on the trees?

A. Only an average crop is the only way I would consider it over a period of at least 10 years.

Q. Did you look up the production record of the property?

A. I saw the record and I also saw the record back when Charlie Brown owned it many years ago and it has not averaged 300 boxes per acre, and that is what we call a marginal producer.

Q. During the last 5 years have you seen the production record of this grove? A. Yes, sir.

(Testimony of Charles Aubrey)

Q. What has been the average during the past 5 years?

A. I did not make any figures on that, but I did average it out. I know I averaged it back in 1943 and it was less than 300 boxes per acre.

Q. How far back did you average it?

A. At that time I think I went back 5 or 6 years.

Q. And you took into consideration the 1942-1943 [12] crop, did you? A. No.

Q. It was back of 1943? A. Yes.

Q. Now, are you familiar with any sales in the general locality within the past 6 months?

A. There was one place sold directly on the east side of this property before I appraised it in 1943 for \$2100, a 5-acre piece sold to Mr. Hinkle, according to what he told me.

Q. That was before 1943?

A. That must have been in 1943.

Q. Within the last 6 months have you made any inquiry in the general locality of the Wumkes Grove as to any sales?

A. Yes, I have made some inquiry.

Q. Did you learn of any sales in the locality within a radius of 2 miles of the Wumkes Grove?

A. No. I don't know it straight but I heard—

Q. I want to know what sales you have known of.

A. I just understood that Mr. Hinkle sold this grove.

Q. This grove that he bought for \$2100 he sold sometime in 1943?

A. No, I think he sold it in this year.

(Testimony of Charles Aubrey)

Q. 1944? A. I think he did.

Q. Do you know what he sold it for?

A. Somewhere around \$4500.

Q. So that, in that particular case, Mr. Hinkle bought that grove for \$2100 sometime either during [13] the early part of 1943 or in 1942 and sold it in 1944 for more than twice as much as he paid for it? Is that correct?

A. Yes, he possibly did.

Q. In your opinion has the demand and the market value of groves increased in accordance with the purchase by Mr. Hinkle and the sale of his property?

Mr. Griffin: Cannot we have one question there?

Mr. Nichols: I will reframe it.

By Mr. Nichols: Q. Mr. Hinkle purchased the grove for \$2100 and within a period of approximately a year sold it for \$4500. Is that correct?

A. That is what I understand.

Q. In your opinion, does that increase represent an increased demand for properties of this general nature?

A. No, sir.

Q. Then what do you attribute the increased sale to?

A. I think just like many of these sales, I think he bought it a little bit cheap.

Q. Did you ever see the property? A. Yes, sir.

Q. Where was it located with respect to the Wumkes property?

A. It joins this within a 5-acre piece.

Q. Do you know what the production record was on the Hinkle grove? A. No, sir.

Q. You say it has how many acres approximately? [14] A. Approximately 5 acres.

(Testimony of Charles Aubrey)

Q. Now, you have fixed what you consider a reasonable value on this property. Would you fix the market value of this property at any different figure, the present market value of the property as of today?

A. Which property?

Q. The Wumkes property?

A. No, I think this is a fair market value.

Q. Do you know of any offers that have been made to purchase this property? A. No, sir.

Q. Would it affect your appraisal and your fixing a reasonable value if you knew an offer of \$10,000 was made for the property?

A. Not a bit in the world, on this market. I would not be at all surprised to hear of that being offered, but that is no sign I think it is worth it.

Q. Do you know what market value is? In your opinion what is market value?

A. Well, it is in case a seller desires to sell but does not have to sell and the buyer likewise, that he does not have to buy but will buy.

Q. Would you fix the market value at any different figure than the reasonable value?

A. No, I think I would state that the reasonable value.

Q. When you say "reasonable value" you mean the same thing as market value?

A. Together with it, [15] naturally.

Q. There isn't any difference between your statement of reasonable value and your statement of market value?

Mr. Griffin: Objected to as argumentative. The witness has already testified that when he said market value or fair or reasonable value he meant the same.

(Testimony of Charles Aubrey)

By Mr. Nichols: Q. Is that what you understand it is, the same? A. That is right.

Q. You are familiar with the Lugo Water Company stock of this property?

A. I am not so familiar with that particular stock, but I have had to figure out water costs on many similar wells all over the country in Land Bank appraising.

Q. When you say that four shares of Lugo Water stock are adequate for this property, what water does that furnish to the property?

A. Well, it furnishes about 2 acre feet.

Q. That is the four shares will furnish 2 acre feet?

A. Yes, probably more; I haven't figured it out carefully, not to the fraction of an inch, but I just say nothing else but what the water is adequate.

Q. So, to sum up your testimony, if I understand it correctly, the fact that there may have been cash offers for the property considerably in excess of the [16] amount that you have fixed as a reasonable value of this property, that still would not change your estimate of the reasonable or market value of the property?

Mr. Griffin: Objected to as already asked and answered.

Mr. Nichols: This is cross examination.

Mr. Duffy: If he has already answered it let him answer it again.

A. I think I know exactly what I said. It would have no bearing upon my judgment.

Mr. Nichols: That is all.

(Testimony of Charles Aubrey)

Redirect Examination

By Mr. Griffin: Q. Offers to purchase, if made, always involve certain conditions, do they not?

A. Yes, sir.

Q. And you have to take various conditions into consideration? A. Yes, sir.

Mr. Griffin: That is all.

Recross-Examination

By Mr. Nichols: Q. What conditions would be involved in a cash offer?

A. Well, do you mean with reference to the locations?

Q. I don't know what you mean by "offers to purchase involve certain conditions." Will you tell me what conditions offers to purchase involve? [17]

A. Well, location and the soil condition and climatic condition and many things can enter into it. It could be close to another farm that one would want to purchase for some good reason and it would be worth more to one party than another.

Q. Assuming that you had a cash offer to purchase property, what conditions would be involved?

A. Well, the one you would naturally consider would be the most money offered if you were the seller.

Q. And, if the amount of money was adequate that would be the full condition, would it not?

A. Naturally.

Mr. Nichols: That is all.

Mr. Griffin: That is all.

J. W. MEHL,

called as a witness by the debtor, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin: Q. What is your name?

A. J. W. Mehl.

Q. Where do you reside? A. Upland.

Q. How long have you resided there?

A. 30 some odd years.

Q. What is your business or occupation?

A. Inheritance Tax Appraiser. [18]

Q. How long have you held that position?

A. Since 1931.

Q. In what county is that?

A. San Bernardino.

Q. What was your occupation prior to that time?

A. Hardware business.

Q. Are you familiar with the citrus industry?

A. I am.

Q. In the course of your duties as Inheritance Tax Appraiser has it become necessary for you to appraise all kinds of property in the County of San Bernardino?

A. That is right.

Q. Have you had occasion to appraise a considerable amount of citrus property? A. I have.

Q. Have you looked over the property that is involved in this appraisal that we will call here the Wumkes grove?

A. I have.

Q. That is located in Redlands, is it?

A. Yes, sir.

Q. Is that citrus property? A. It is.

(Testimony of J. W. Mehl)

Q. What can you tell us about the nature of the property in general?

A. Well, I was over there several times and went over it and I figured there was 42 rows deep and 19 rows wide, a total of around 800 trees, approximately 6 acres, and the back part of the grove there is Valencias in front and Valencias clear at the back, and the rest of them are Navels. [19] The trees in the back seem to be planted—I don't know—it is gravelly soil, sandy, looks like a wash had been filled in sometime. I don't know, but it has that appearance. The trees in front are large trees, but very close together. They are tall and the crop on them for the size of the trees is just about a half a crop. The reason is, I figure, on account of the sun not getting into it because most of the crop is in the top of the trees and the trees will never bear a big crop.

Q. You say they never will bear a big crop?

A. Not the way they are set.

Q. Why is that?

A. They are too close together. The trees are large and the only way they can let the sun into the tree is pruning the top of the tree. They will never produce a big crop but a tree that size should produce about 6 boxes to the tree, so I estimated just about half of 6 boxes to the tree.

Q. Does the closeness of the trees have anything to do with the availability to cultivate?

A. It naturally would.

(Testimony of J. W. Mehl)

Q. In what way would it affect that? Suppose you are pruning the top of the tree?

A. Well, your tree is just growing out of sight. You can only go about so high on a citrus tree. All citrus trees are pruned from the top and bottom both. You have got [20] to leave light in it and you have got to get the sun in it.

Q. And you would have to make a general pruning all around in order to get the light in there?

A. Yes, but these trees are so large and close together that a person cannot get to them.

Q. That is not true of the smaller trees at the rear?

A. No, they look more as if they were stunted.

Q. Did you notice the soil over there at all?

A. Yes.

Q. I think you spoke of it as being gravelly.

A. Yes, gravelly and sandy. At the back it is very gravelly.

Q. Did you come to some conclusion as to the reasonable market value of that property at the present time?

A. I did.

Q. What is your opinion at this time as to its reasonable market value?

A. Well, without the crop I would estimate it at \$4450, and for the crop 1500 boxes. The ceiling price is four cents a pound, 50 pound field boxes would be \$3000 for the crop on the trees, and that would be \$7450 with the crop, but to figure that net to the grower generally figures about 75 cents a field box net to the grower, so the packing house men tell me. So, taking those figures, \$4450 and \$1125 would be \$5575 net to the [21] grower if he takes out his labor.

Mr. Griffin: You may cross examine.

(Testimony of J. W. Mehl)

Cross-Examination

By Mr. Nichols: Q. When was the last time you were on the property? A. Last week.

Q. When was the first time you were on the property?

A. The week before.

Q. You never saw the property the early part of 1943? A. No.

Q. You don't know what change there may have been in the property? A. No.

Q. Do you know what the Navel crop was on a box basis?

A. No, I don't. I saw a report on that. I forget just what. It was very low.

Q. Mr. Duffy, do you have the returns from the Navel crop?

Mr. Duffy: I don't know.

By Mr. Nichols: Q. Now, you estimate there were 1500 boxes of Valencias on the property?

A. Roughly, yes.

Q. Now, we find today that there is 1159 boxes of Navels that were picked off that grove. Did you ever make a check on the number of trees that were on there?

A. Yes, there were approximately 800 trees; 798, I think.

Q. How many were Valencias?

A. Approximately [22] 500 Valencias.

Q. Then approximately 300 Navels? A. Yes.

Q. And you estimate that there is 1500 boxes of Valencias on the property?

A. That is what I would say, roughly.

Q. Have you ever owned an orange grove yourself?

A. No.

(Testimony of J. W. Mehl)

Q. You have been in the hardware business before you became Inheritance Tax Appraiser?

A. That is right.

Q. What is the basis upon which the Inheritance Tax Appraiser appraised property? Is it on a basis of market value?

A. That is right.

Q. What would you say would be a description of what market value is?

A. Well, if you had a ready buyer and a ready seller.

Q. What is your understanding of what market value is?

A. If you had a ready buyer and a ready seller.

Q. That would be a criterion for market value?

A. That is right.

Q. If there was a ready buyer for this property for \$10,000 cash would that affect your appraisal, if you knew that that offer was being made?

A. I think the man would be crazy.

Q. Would it affect your appraisal of the property?

[23] A. No.

Q. It would not make any difference so far as your appraisal was concerned?

A. No, I think it would be out of line.

Q. In the event you knew that there were three offers to purchase by various purchasers on a cash basis between \$9,000 and \$10,000 for this property, would that affect your appraisal?

A. Naturally it would.

Q. So that when you appraise property you take into consideration the demand for property in that locality?

A. Yes, sir.

(Testimony of J. W. Mehl)

Q. In appraising this property did you inquire as to whether there had been any sales in that locality?

A. I did not.

Q. Now, did you take into consideration that there had been 1159 boxes of Navels picked on the property, which would make them a total picked on the property of a known amount of 1159 boxes and an estimated amount of 1500 boxes?

A. No, because the Navels were gone.

Q. Now, take this one piece of property, this same piece of property after the Valencias are off.

A. I would appraise it at a different figure.

Q. You mean when the Valencias are off the property then you would appraise it at a different figure? [24]

A. Sure.

Q. What would you appraise this property for when the Valencias are off?

A. I would appraise it at \$4450.

Q. And your appraisal with the Valencias on is what?

A. \$7450, but that would not be net to the grower.

Q. Will you tell me what your appraisal is with the Valencia crop on? A. \$7450.

Q. Now, this is approximately 6 acres?

A. Approximately.

Q. Assuming that there are 2659 boxes of both Valencias and Navals from the property what would you say the estimated return would be from that fruit?

(Testimony of J. W. Mehl)

A. That is hard to tell because they are different seasons. The Navel season is not the same as your Valencia season. When the Navels are ready to be harvested the Valencia crop has just barely started.

Q. Do you know whether Navels generally brought the ceiling price this year?

A. I think they did.

Q. Well, assuming that they brought the ceiling, and assuming that the Valencias will bring the ceiling—

A. I forget what the ceiling was, but it is changed, I understand.

Q. Then, just assuming that the crop on this property brought \$5,000 gross returns or net returns from the packing house, would that in any way affect [25] your appraisal?

Mr. Griffin: I object to that on the ground it is incompetent, irrelevant and immaterial and also asking two questions. I think if the question is read back it shows gross returns and net returns.

By Mr. Nichols: Q. Assuming that the fruit on this—the packing house net returns on this property brought in the neighborhood of \$5,000 this year, that is, the 1943-1944 season, would that affect your appraisal?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and asking for a conclusion of this witness as to what are the net returns. Is there anything taken out for pruning or fertilizing or upkeep?

(Testimony of J. W. Mehl)

Mr. Nichols: I am not bringing that into the question. I say the net packing house returns.

Mr. Duffy: You are assuming that certain things are done?

Mr. Nichols: That is right.

Mr. Duffy: Then you are asking him to fix the value on an assumption as to what might be the return.

Mr. Nichols: No, it is a hypothetical question if the net returns received from the packing house were \$5,000 on this property would that affect [26] or have any effect upon Mr. Mehl's appraisal of this property?

Mr. Griffin: I object to it as no proper foundation laid.

Mr. Duffy: I think that will have to be sustained.

By Mr. Nichols: Q. Now, you say that you have never operated an orange grove? A. No.

Q. And you don't know what the actual cost of production is to a grower of your own knowledge?

A. Only what I got from packing house managers. I meet quite a few of them.

Q. But that has not been from actual experience?

A. No.

Q. Did you make any inquiry from any property owners in this general locality as to what they were holding their property for? A. No, I did not.

Q. You made no inquiry as to any sales that may have occurred in the territory? A. No.

(Testimony of J. W. Mehl)

By Mr. Duffy: Q. What is the figure now that this court has got to deal with?

A. I have given \$4450 without the crop; an estimated crop of \$3,000, but a net to the grower of \$1125.

Mr. Duffy: Then your value for the property—

A. Without the crop would be \$4450.

Mr. Duffy: And \$1125 for the crop? [27]

A. Yes, net to the grower, that is \$5575.

By Mr. Nichols: Q. How did you arrive at that net figure that you give?

A. I get that from packing house men, that it should bring net to the grower 75 cents a field box.

Q. I assume you have based that figure on a ceiling price on Valencias? A. That is right.

Q. And that is \$2.00 is it?

A. Yes, 4 cents a pound, I think it is.

Q. Do you know what size box the packing house has? A. 50 pounds a box.

Q. What would that ceiling be?

A. \$2.00 for a field box, so I understand.

Q. Then you figure it costs the grower \$1.25 per box to raise that fruit? A. That is right.

Q. On a basis of obtaining a ceiling then, a deduction of \$1.25 per field box for growing, that would leave 75 cents net to the grower? A. Right.

Mr. Nichols: That is all.

Mr. Griffin: That is all.

W. H. JOHNSON,

called as a witness by the debtor, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin: Q. State your name. [28]

A. W. H. Johnson.

Q. What is your business or occupation?

A. Real estate broker.

Q. Where are you situated? A. Redlands.

Q. How long have you been in business in that city?

A. About 24 years, or 23.

Q. What kind of business was that?

A. Real estate business.

Q. And have you been connected with any companies or anything along that line?

A. Yes, I was with the Redlands-Yucaipa Land Company before I went into business.

Q. What is the nature of that business?

A. Developing deciduous land, subdivisions.

Q. Has your business caused you to become familiar with citrus properties? A. Yes, sir.

Q. And is that in the nature of buying and selling citrus properties or in the nature of owning?

A. Buying and selling.

Q. Have you ever owned or operated citrus properties?

A. Not citrus. I have operated deciduous orchards for the last 30 years.

Q. Are you familiar with the operation of citrus properties? A. Yes, sir.

Q. Have you ever acted as an appraiser before?

A. Yes, sir. [29]

(Testimony of W. H. Johnson)

Q. In what courts?

A. Oh, a number of appraisals in this court and also in the Superior Court.

Q. Now, are you familiar with this property that we have called the Wumkes property? A. Yes, sir.

Q. You testified in the former hearing, didn't you?

A. Yes, sir.

Q. Have you examined the Wumkes property?

A. Yes, sir.

Q. And did you prepare for the other hearing a plat not only covering the Wumkes grove but also covering the Clark grove? A. Yes.

Q. The Clark grove is an adjoining grove?

A. That is right, to the east.

Q. I will ask you if this is the plat that you have prepared? A. Yes, sir.

Q. Just what does this represent, Mr. Johnson?

A. That represents the planting of the grove and the varieties of trees.

Q. And do you designate on there the type of trees in some kind of a tabulation? A. Yes, sir.

Q. And you prepared this tabulation yourself, did you? A. Yes, sir.

Mr. Griffin: I offer this in evidence at this time.

Mr. Nichols: No objection.

Mr. Duffy: Debtor's Exhibit 4 admitted in [30] evidence at the last hearing on this proceeding, to-wit, on the 3rd day of March, 1943, and now being filed in the office of the Clerk of the United States District Court, Southern District of California, Central Division, is now admitted as an exhibit in this hearing as "Debtor's Exhibit 4."

(A grid of handwritten symbols, including letters like X, V, N, S, A, M, and various numbers, arranged in rows and columns. Some cells contain boxed letters or numbers, such as 'M', 'N', 'S', 'A', '12', '11', '13', '14', '15', '16', '17', '18', '19', '20', '21', '22', '23', '24', '25', '26', '27', '28', '29', '30', '31', '32', '33', '34', '35', '36', '37', '38', '39', '40', '41', '42', '43', '44', '45', '46', '47', '48', '49', '50', '51', '52', '53', '54', '55', '56', '57', '58', '59', '60', '61', '62', '63', '64', '65', '66', '67', '68', '69', '70', '71', '72', '73', '74', '75', '76', '77', '78', '79', '80', '81', '82', '83', '84', '85', '86', '87', '88', '89', '90', '91', '92', '93', '94', '95', '96', '97', '98', '99', '100'. The grid is mostly filled with 'X' and 'V' in the top half, and 'N' and 'S' in the bottom half. Some cells are empty or contain other symbols like 'A', 'M', '12', '11', '13', '14', '15', '16', '17', '18', '19', '20', '21', '22', '23', '24', '25', '26', '27', '28', '29', '30', '31', '32', '33', '34', '35', '36', '37', '38', '39', '40', '41', '42', '43', '44', '45', '46', '47', '48', '49', '50', '51', '52', '53', '54', '55', '56', '57', '58', '59', '60', '61', '62', '63', '64', '65', '66', '67', '68', '69', '70', '71', '72', '73', '74', '75', '76', '77', '78', '79', '80', '81', '82', '83', '84', '85', '86', '87', '88', '89', '90', '91', '92', '93', '94', '95', '96', '97', '98', '99', '100'.)

Chicago
House

— Key —

- V X Young trees
- N I Small but older trees
- M S Vacant space or diseased worthless trees
- M S Small stunted worthless trees. Should come
- B Australian trees - 20 of them.
- S Seedlings.
- Sw Sweets.

Director Ex 4
for Survey Dept
Admitted

Yard
House
g
g
g

(Testimony of W. H. Johnson)

Mr. Nichols: I have no objection to its being admitted in this hearing with the understanding that it is admitted as a chart which was made on the day that Mr. Johnson will testify that it was made.

Mr. Griffin: No objection to that.

By Mr. Griffin: Q. Since the time that you made this plat, have you been upon the property?

A. Yes, sir.

Q. Do you know whether there have been any changes made on the property that you have not indicated on the plat?

A. Not that I know of. Possibly a few new trees may have been put in. I did not check that definitely.

Q. Now, calling your attention to this plat, I notice a key over here. Just explain this key to the court.

A. Well, the youngest tree in the grove, the smaller ones, these underlined, both the Valencias and Navels.

Q. In other words, the tree that is a young Valencia tree is designated by a "V" with a red line underneath it?

A. That is right. [31]

Q. And a young naval tree would be with an "N" with a line underneath it?

A. That is correct.

Q. Now, what is the key that you use for small but older trees?

A. Well, there is an effort to segregate the two different sizes of trees. They run from larger trees in the front to very small ones in the back. This is a small but older tree than the ones that are underlined.

Q. That is small but older trees you have designated by a "N" with a red line going perpendicular to that to the right, is that right?

A. That is right.

(Testimony of W. H. Johnson)

Q. Then the vacant space of worthless trees, you have an "N" with a circle around it?

A. Well, the circle indicates a vacant tree. Practically all of them are Navels.

Q. If it was a Valencia it would be a "V" with a circle in red? A. Yes, sir.

Q. Then the other small stunted worthless trees which you say should come out are indicated by an "N" or a "V" with a box in red around it, is that right?

A. Yes.

Q. Now, the last part of your key does not apply to the Wumkes grove?

A. No, this is over in the other grove.

Q. Directing your attention to your plat here I note that the front portion of the grove is marked [32] pretty well with "V's." What is the nature of that property to the front of the Wumkes grove?

A. Those are the larger Valencia trees. They are large and very close together.

Q. And then in behind I notice that you have a number of rows of "N" or Navel trees. Is that correct?

A. That is the block of Navels in back of the Valencias, yes, sir.

Q. And then immediately following the Navel trees and at the rear of the grove I find some 5 rows of Valencias. Is that correct? A. That is right.

Q. And those Valencias in the rear are marked "V" with a line underneath them? A. Yes.

Q. What do you mean by that?

A. That they are the younger trees, and the smallest trees in the plat.

(Testimony of W. H. Johnson)

Q. Now, Mr. Johnson, can you tell us anything regarding the nature of the soil of this grove? Did you examine it? A. Yes, sir.

Q. What did you find?

A. I found that the soil in the rear is very very light gravelly soil and it gets heavier as you go to the north or front side of the grove. The rear of this grove and the adjoining groves, the trees never have been able to accomplish anything and my inquiry from the Pioneer neighbors is that there was a wash a number of years ago that [33] went through that back section.

Q. Now, what is the nature of the trees in that back section?

A. Well, they are small and they are stunted trees. They look like about 8 to 10 year old trees and apparently they are nearly 16, is the information I got from people that knew when they were planted.

Q. Now, did you take some pictures out there of the grove? A. Yes, sir.

Q. These pictures that you took are the ones that were taken for the former hearing?

A. Yes, just a few days before the former hearing.

Q. And that was approximately a year ago?

A. Yes, a little over a year ago.

Q. I show you this picture and ask you if you remember what that was.

A. This was taken in the rear of the Wumkes grove.

Q. Is that the small trees that you speak of back there? A. Yes.

(Testimony of W. H. Johnson)

Mr. Griffin: I offer this in evidence.

Mr. Nichols: I object to it on the ground that it does not clearly represent the condition of the trees at the present time. The testimony is it was taken over a year ago.

By Mr. Griffin: Q. You say you were in the property just recently? A. Just last week, yes. [34]

Q. And you know the condition of the trees in the rear of that grove at the present time, do you?

A. Yes, sir.

Q. Would you say there was any material difference in the appearance of the grove at the present time to what it was when that picture was taken?

A. Very little, any more than the natural 12 months would give it.

Q. Would you say that picture there has materially changed since the picture was taken? A. No.

Mr. Griffin: We renew the offer.

Mr. Nichols: We object to it and on the additional ground that no proper foundation has been laid and the statement of the witness that there has been a change.

Mr. Duffy: Well, I think that is a matter for cross examination. Objection overruled. The exhibit is a file of the United States Court and is marked "Debtor's Exhibit 9."

DEBTOR'S EXHIBIT 9.



(Testimony of W. H. Johnson)

By Mr. Griffin: Q. I show you another picture and ask you what that purports to be?

A. That is another picture in the rear of this same orchard.

Q. And when was that taken?

A. I think it was in February, 1943.

Q. And it was taken for the purpose of showing the [35] size of the fruit?

A. The size of the fruit and it was a 14 foot pole there.

Q. You have been in the grove recently, have you?

A. Yes, sir.

Q. Would you say that the height of those trees have materially changed since the taking of that picture?

A. No, they have not.

Mr. Griffin: I offer that in evidence.

Mr. Nichols: Object to it.

Mr. Duffy: Overruled. Admitted as "Debtor's Exhibit 8."

DEBTOR'S EXHIBIT 8.



(Testimony of W. H. Johnson)

Mr. Nichols: I want my objection to show the grounds that no foundation has been laid and that the pictures were taken too long ago to correctly represent what the present condition of the property is.

Mr. Duffy: The same ruling.

Mr. Griffin: I show you this picture and ask you what that indicates?

A. That shows the same pole alongside of one of the largest trees in the upper end about in the center here. At the time that was taken there was not a dozen oranges on that tree.

Mr. Nichols: I object to the answer and move to strike it out on the ground it has no bearing on this case as to what oranges were on the trees [36] in 1943.

Mr. Duffy: That portion of the answer as to the number of oranges on the trees will be stricken out.

By Mr. Griffin: Q. The picture was taken, was it, for the purpose of portraying the height of the tree?

A. Both the height of the tree and the bearing condition of the trees is that section there.

Q. Where is that portion of the grove located? Is that to the front or the rear? A. To the front.

Q. The trees to the front are larger or smaller than the trees to the rear? A. Very much larger.

Q. From your examination of the grove and your experience as an appraiser, did you come to a conclusion as to the reasonable market value of this property at the present time? A. Yes, sir.

Q. And what was your opinion as to the reasonable market value at this time?

A. I appraised it at \$5400.

(Testimony of W. H. Johnson)

Cross-Examination

By Mr. Nichols: Q. This plat that you made, Mr. Johnson, was made sometime about in January or February of last year?

A. Yes, sir, I think it was in February.

Q. Do you recall how many trees there were on that [37] property?

A. I think it was just a few trees less than 800.

Q. How many of those trees were so-called stunted trees?

A. I don't know. This entire section back here—probably a little less than half.

Q. You mean a little less than half of the entire trees on the property were stunted trees? A. Yes, sir.

Q. And were those Navels or Valencias or both?

A. Navels and the smaller Valencias in the back.

Q. Now, you have placed the reasonable market value of this property at this time as \$5400?

A. That is right.

Q. And that is the way the property stands today?

A. Yes, sir.

Q. That is with the crop on the tree, is it?

A. Yes, sir.

Q. And did you also make an estimate as to the number of boxes of Valencia oranges on the trees at this time?

A. Yes, there is probably from 1200 to 1500 boxes in there.

Q. When did you make that estimate?

A. This past week.

(Testimony of W. H. Johnson)

Q. How did you make it?

A. I went through the grove and sized up the trees, about what they would be per tree. [38]

Q. Did you actually go through the grove and size up the trees as to what fruit they had on them?

A. Yes, sir. I don't claim to be a fruit man and am not in the estimating business, but I think I am pretty close to it.

Q. You haven't done such an awful lot of it, have you? A. No.

Q. Have you sold any citrus property in this general locality in the past 6 months? A. No.

Q. Have you had any listed for sale?

A. No, not right in there, no.

Q. How near would you say the nearest grove that you had listed for sale was with respect to this property?

A. Oh, probably a mile and a half or 2 miles from there.

Q. What property was that?

A. The property east of this grove on Lugonia Avenue, just past Orange Street.

Q. Just how many acres are there in that piece?

A. 5 acres.

Q. What was it listed with you at?

A. I sold it for \$5500.

Q. How long ago was it that you sold it?

A. Oh, it has been probably very nearly a year, 10 or 12 months.

(Testimony of W. H. Johnson)

Q. Between the time you sold this property that you [39] have testified to and the present time, has there been any increase in the demand for citrus land?

A. I think there has been a gradual increase in citrus land during the past couple of years.

Q. And the grove that you say you sold over a year ago for \$5500, do you have any opinion as to what you could sell that grove for today?

A. Well, I don't believe it would sell for any more today.

Q. Was that Navel or Valencia?

A. Well, some Navel and some Valencia, quite a few sweets and a few seeds.

Q. Was the property improved with a house?

A. No house, no.

Q. And was it sold at the time when there was fruit on the trees? A. Yes.

Q. What kind of a set of fruit did it have, if you recall?

A. Well, it was not a large crop; probably not over 1500 boxes on it.

Q. In your opinion how did that property, with respect to the trees, compare with the Wumkes property?

A. Well, it is in much better soil, stronger soil. I had seven shares of Old Lugonia water, which has a market value of \$225 a share.

Q. Do you know what the market value is of Lugo water stock? A. No, I don't, exactly.

Q. You haven't heard of any offers of sales that [40] have been made recently?

A. No, it is an old established well; there is none particularly for sale that I know of.

(Testimony of W. H. Johnson)

Q. In your opinion what is the reasonable market price for a share or for four shares of Lugo Water stock?

A. It would only be a guess. Well water generally does not bring the money that the Mutual Water Company shares bring.

Q. Did you take into consideration in your forming an opinion as to the reasonable market value the fact that there were four shares of Lugo Water stock that went with this property?

A. Naturally I took into consideration the nature of the water.

Q. What did you fix the value of that stock at then?

A. I did not break it down into small items. We know that well water is not, or does not, carry the value to the grove that water stock does.

Q. Do I understand that you did, or did not, place any value on this Lugo Water stock?

A. Naturally I did.

Q. You don't know what it is at this time?

A. No, I did not break it down.

Q. You testified before, did you? A. Yes, sir.

Q. What did you fix the reasonable value of this property at that time in the former hearing?

A. \$3600. [41]

Q. And what has occurred since the prior hearing to make you change your figure at this time?

A. Well, there is a more active market and all properties are selling for more money than they have in the past. It has a little more fruit on it than it had before.

(Testimony of W. H. Johnson)

Q. Do you know of any citrus property in this general locality available for purchase for a thousand dollars an acre? A. No, I don't.

Q. Do you know of any available for purchase for \$1500 an acre?

A. I haven't any listings in this vicinity at all at the present time.

Q. So that during the past year you have not been familiar with the value, at least the sale value, of property in this general locality?

A. Well, yes, I know what went on in that district.

Q. Were there any sales that you know of?

A. Yes, the adjoining property to Wumkes to the east sold.

Q. How many acres was that? A. 5 acres.

Q. What did that sell for? A. \$4500.

Q. What piece was that?

A. The Hinkle grove.

Q. And that was sold more than a year ago?

A. Just about a year ago, I think. Well, it was not sold at the time we had this hearing here.

Q. Do you know of any other properties? [42]

A. 15 acres sold across the street from this grove.

Q. What did that sell for? A. \$19,000.00.

Q. Do you know of any other property that was sold?

A. Yes, further west on Lugonia there was a 16 acre piece that was sold.

Q. How much was that sold for?

A. A friend of mine here can probably give us a better idea.

(Testimony of W. H. Johnson)

Q. Do you know? What is your best opinion as to what it was sold for?

A. My best opinion would be \$8500. I had it listed for \$7500.

Q. \$8500? A. Yes, sir.

Q. That is located where?

A. That is west on Lugonia.

Q. Approximately how far west?

A. Oh, I don't know; a mile or two, probably a couple of miles.

Q. How did that property compare with the Wumkes property?

A. Well, the size of the trees are about the same; the grove has been neglected and the trees were full of dead wood.

Q. It was not what is called a good grove?

A. It had been a good grove and then tremendously neglected. I hope it will come back.

Q. How long ago was that sale made to your knowledge?

A. Oh, I should judge something like a year ago; I don't remember exactly.

Q. Have you evidenced any interest of any purchasers [43] or anybody seeking to purchase citrus properties in this general locality?

A. Well, there are available buyers for property in any location or grove that they are seeking might be available.

Q. Have you had any prospective buyers ask you for properties in this general locality recently?

A. Yes, Dr. Clark looked at the grove adjoining on the south of this property some little time ago and turned it down.

(Testimony of W. H. Johnson)

Q. What was the asking price for that property?

A. I don't know exactly; I think it is about 7 or 8 acres; it has a good house on it. I sold Dr. Clark his first grove when he came to Redlands and he was in my office and I asked him why he didn't buy this grove and he said—he spoke of the wash running through there and it was not the class of grove that he would be interested in.

Q. You don't know whether he made an offer or not?

A. He did not, no.

Q. You say there is a sandy gravelly condition in a part of this property?

A. Yes, sir.

Q. Does that appear to have been caused by the wash?

A. Yes.

Q. What did you find with respect to the existence of a wash on this property?

A. It goes through for some distance going from the northeasterly to a [44] southwesterly direction, draining the section to the east.

Q. Is that an open wash?

A. It is not at the present time, but it had been. The city has improved their drainage and a few years ago that was taken care of.

Q. So that as far as the future is concerned that hazard of a wash has been removed?

A. I think the water hazard has, yes.

Q. In your opinion the property would gradually, or the soil condition would gradually improve on this property?

A. Well, it would naturally improve as you use more fertilizer, but it is real gravelly in the back. There isn't any soil there.

(Testimony of W. H. Johnson)

Q. This property is in a good location, is it not, in a citrus field? A. Yes.

Mr. Nichols: That is all.

Redirect Examination

By Mr. Griffin: Q. This property that you were speaking of, this 15 acres that sold for \$8500—

A. The 15 acres sold for \$19,000.

Q. I was thinking of the one that was bought by Mr. K. C. O'Bryan, that piece I think you said you had it listed for \$7500 and it sold for \$8500.

A. As near as I know. It sold for more than I had it listed for at that time. [45]

Q. How many acres was there in that piece?

A. It is called 15 acres. In my opinion it is nearer 14.

Q. Is there a house on the property or not?

A. There is an old house.

Q. The house would be included in the value, is that correct? A. Yes.

Q. This grove across the street that you spoke of—what is the name of that grove?

A. A. R. Shultz owns it at the present time and bought it from Dr. Sweeney.

Q. How many acres are in that grove? A. 15.

Q. That sold for how much? A. \$19,000.

Q. Was that with the crop or without the crop, do you know?

A. That was with the crop, at least part of the crop.

Q. Does that have any buildings on it?

A. Yes, there is a building, stucco, I believe.

Q. Are there any buildings on it?

A. No, I guess not.

(Testimony of W. H. Johnson)

Q. In comparison to the Wumkes grove is that a better grove or not as good a grove?

A. Yes, I think it is a much better grove. After all we buy orange groves for the production we can get and these are very large trees and I think it would be an average the last 10 years of 3 times the production of this [46] grove we have here.

Q. The Wumkes grove? A. Yes.

Mr. Griffin: That is all.

Recross-Examination

By Mr. Nichols: Q. Do you base your fixing a reasonable market value on the productivity of the property, on the returns from the property?

A. Yes, sir.

Mr. Nichols: That is all.

Redirect Examination

By Mr. Griffin: Q. Do you take in any other elements at all in arriving at that value?

A. Well, naturally I take into consideration a good deal of common sense in checking my groves. For illustration, I see 60 acres in the Highgrove district sell about 12 years ago for \$120,000 and I saw it sell less than a year ago for \$20,000. If a man is going to be an appraiser he is going to have to use a lot of horse sense in between to get the actual value of that grove. It certainly would not be worth \$120,000, and the \$20,000 would be ridiculous. This particular grove we are appraising today shows a production of from less than 2 boxes to a little over 3 boxes per tree over a period of probably 5 or 7 years. This present year is probably the

(Testimony of W. H. Johnson)

largest crop it has had in a number of years. We [47] concede that a grove owes itself at least 3 boxes of fruit per tree for maintenance and that certainly reflects a valuation over a term of years if you cannot get more fruit than enough to maintain it, and it is not a very hot investment. You cannot gauge the value of a grove on one year's production.

Q. Then, in order to determine the reasonable market value you take into consideration as an element of productivity of the grove, is that right? A. Yes, sir.

Q. And do you also take into consideration the demand for groves at the present time, or at that time?

A. Yes. We have what some call a gambler's market at the present time.

Q. Do you also take into consideration the soil and nature of the trees? A. Naturally.

Q. And the locality? A. Yes, sir.

Q. And in referring to the market you are taking into consideration the various sales that you have heard made in that district, isn't that correct? A. Yes.

Mr. Griffin: That is all.

By Mr. Nichols: Q. You stated that the production of this grove has been increased in the last year that you have been familiar with the property.

A. Yes, we have one of the largest [48] crops this last year over the entire district.

Q. And this particular property has been gradually built up from nothing to now something over 3 boxes?

A. That is the record.

(Testimony of W. H. Johnson)

Q. So that this property due to care or the conditions is improving greatly in value, is it not, as time goes on?

A. Well, the condition of the grove is a little better than it was a year ago.

Q. And was it a little better a year ago than it was 2 years ago?

A. Possibly to some extent. I didn't see it 2 years ago.

Mr. Nichols: That is all.

Redirect Examination

By Mr. Griffin: Q. Do you know what the crop was last year on the grove?

A. I brought the record in here but I don't recall it.

Q. Can you tell us roughly? A. I don't remember just what it was.

Q. I think that you testified that the crop—

Mr. Nichols: Are you going to refresh his memory or are you going to let him testify?

Mr. Griffin: Wait until I finish my question.

By Mr. Griffin: Q. I think you testified that in 1941-1942 the crop was somewhere a little better than 3 boxes to the tree. Is that correct? [49]

A. That is right.

Q. Do you have any idea as to what the crop was last year?

A. No, but it was a much lighter crop. It is in the record at the last hearing.

Mr. Griffin: That is all.

Mr. Nichols: That is all.

Thereupon a recess is taken until 1:30 o'clock P. M.

After recess. 1:30 o'clock P. M.

J. H. NICHOLSON,

called as a witness by the debtor, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Griffin: Q. Where do you live?

A. Redlands.

Q. How long have you lived there?

A. Since 1914.

Q. What is your business or occupation?

A. I am Assistant Secretary of the Redlands Heights Groves.

Q. How long have you held that position?

A. Since 1927.

Q. And is that a packing house? A. It is.

Q. What kind of a packing house? A. Citrus.

Q. Are you interested in citrus properties? [50]

A. Yes, sir, I am.

Q. As an owner or in what capacity?

A. As an owner.

Q. Are you familiar with the operation of groves?

A. I am.

Q. And you have been for what time?

A. Since 1925.

Q. Is there anything in your educational background pertaining to citrus trees or the care of citrus trees?

A. Well, in that connection my 2 years in ranching experience would answer that.

Q. I was thinking of your scholastic attainments.

A. No, entirely the opposite.

(Testimony of J. H. Nicholson)

Q. Are you familiar with the property we have been talking of here, referred to as the Wumkes grove?

A. Yes, I am.

Q. That grove has been operated by Mr. Powell for the last two years?

A. That is correct.

Q. And the crops that have been picked and marketed have been marketed through the Redlands Heights Company?

A. Yes.

Q. Are you also familiar with the grove itself?

A. I am.

Q. And have you ever—have you, by reason of your familiarity with the grove and also from your experience arrived at an opinion as to the market value of that property at the present time? [51]

A. I have, yes.

Q. What, in your opinion, is the market value at this time?

A. \$6,000.

Mr. Griffin: That is all.

Cross-Examination

By Mr. Nichols: Q. That is with or without the crops?

A. As is.

Q. As it is now?

A. Yes, sir.

Q. You have gone over this property recently, have you?

A. Yes, sir.

Q. Have you made any estimate as to the crop that is on the property?

A. Approximately 1500 boxes, I would say.

Q. Would you say it would be more than that?

A. No, I would not. Our packing house estimated it originally at 1100.

Q. And then have they changed that estimate?

(Testimony of J. H. Nicholson)

A. I believe they have. They have revised their estimates upwards in most cases.

Q. You don't know what the later estimate is?

A. No.

Q. You say you own citrus property?

A. Yes, sir.

Q. And you own that property in this general locality?

A. Within two and a half or three miles.

Q. And how long ago did you acquire that property?

A. 1936. [52]

Q. How many acres is that? A. 25.

Q. Have you had any recent offers to sell that property? A. No, sir.

Q. What per acre would be the smallest figure that you would sell your property for at this time?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and nothing to do with the value here in this case.

Mr. Nichols: Only a value as to what the condition is in this general locality, as to asking and offering price.

Mr. Duffy: The objection is sustained.

By Mr. Nichols: Q. Do you know of any sales in this general locality recently?

A. Only by hearsay.

Q. When you say that you fix the market value of this property at \$6000, what factors enter into your fixing the value at that figure?

A. That would be my personal figure on a basis that I think I could work it out.

Q. Would that be on the basis of what the property could be sold for within a reasonable time?

A. That would be hard to say. Too many things enter into the picture.

(Testimony of J. H. Nicholson)

Q. So the value you place on it would be the price on which you would be willing to purchase it? [53]

A. Yes, sir.

Q. And that is the sole basis for your fixing the market value at that figure of \$6000?

A. Yes, sir.

Mr. Nichols: That is all.

Redirect Examination

By Mr. Griffin: Q. I believe you testified on direct examination that \$600 was the market value of the property? Is that correct?

A. Well, my figure of \$6000 is based on what I consider the value of the property would be to me.

Q. And that was based on—you figure that you obtain the property at a sacrifice or that would be the reasonable market value at the present time?

A. I would say it was the reasonable market value at the present time.

Mr. Griffin: That is all.

Recross-Examination

By Mr. Nichols: Q. If some other individual offered \$10,000 for this property would that affect your opinion as to the market value?

A. That would not help me to work it out any better.

Q. Because you would not get the property, is that right? A. Yes, as far as I am concerned.

Q. So the only thing you base your opinion on is what you would be willing to pay for it, is that [54] correct?

A. Yes, sir.

Mr. Nichols: That is all.

Mr. Griffin: That is all.

Debtor rests. [55]

LYMAN M. KING,

called as a witness by the Petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nichols: Q. Where do you reside?

A. Redlands.

Q. How long have you resided in Redlands?

A. Since 1902.

Q. What is your business or occupation?

A. I am in the Savings and Loan business.

Q. What office, if any, do you hold in that business?

A. I am president of it.

Q. What is the name of the Savings and Loan business?

A. Redlands Federal Savings and Loan Association.

Q. How long have you been engaged in that capacity?

A. Since 1931.

Q. Have you had any occasion to make appraisals of properties in the locality of Redlands and particularly in the locality of what is known as the Wumkes grove?

A. Not in that capacity. I formerly acted as State Inheritance Tax Appraiser and I did do some of that work then, but in this business that I am now engaged in we do not go into the orange growing business particularly. We deal in houses and lots almost altogether.

Q. Well, in connection with your residing in Redlands [56] since 1902 have you had occasion during that time to see citrus properties and form an opinion as to values?

A. Yes.

Q. Are you familiar with what is called the Wumkes property? A. Yes, sir.

Q. Have you ever had any occasion to go over that property? A. Yes, sir.

(Testimony of Lyman M. King)

Q. When was the first time that you recall?

A. Four years ago.

Q. In connection with what work was it that you looked at the property?

A. That was an independent appraisal that someone asked me to make. I think it was Mr. Sexton, the attorney, at that time.

Q. Did you make an appraisal at that time?

A. Yes, sir.

Q. And what, at that time, did you estimate the reasonable market value of the property to be?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial.

Mr. Duffy: It seems to me it is pretty remote. The objection is sustained.

Q. Have you had occasion to view the property at any subsequent time? A. Yes, sir.

Q. When was that?

A. Oh, last Sunday, or last Saturday.

Q. That would be April 29th?

A. Yes, if that is [57] what the calendar says.

Q. That was just last Saturday? A. Yes, sir.

Q. Did you go over the property at that time?

A. I did.

Q. Now, in your opinion is there a present demand for properties of the kind that the Wumkes property is?

A. Yes, sir.

Q. Did you form an opinion as to the reasonable market value of the Wumkes property? A. I did.

Q. What, in your opinion, is that value?

A. \$8912.50.

(Testimony of Lyman M. King)

Q. Is that with or without the present crop on the property? A. That is without.

Q. With the present crop on the property, would that affect your appraisal of the reasonable market value at this time? A. Yes, sir.

Q. What was the reasonable market value—what would you say the reasonable market value of the property would be with the crop?

A. I figure the crop is worth at least \$3,000.

Q. So that the reasonable market value with the crop would be \$11,912.50? A. Yes, sir.

Q. Now, in arriving at the market value that you have just testified to, what conditions or circumstances did you have in mind in expressing an opinion as to the reasonable market value of the property? [58]

A. Well, figuring what would be the probable ceiling of the Valencia oranges.

Q. I mean of the land itself, in making your appraisal of the land itself, how do you arrive at the market value?

A. Well, frankly, I go over it and to the best of my ability judge what I think it would sell for.

Q. Do you have in mind the best purpose for which the land can be used? A. Yes, sir.

Q. What, in your opinion, is the best purpose for which this land can be used?

A. I think the highest and best purpose for this land is for citrus growing.

Q. Then do you have in mind the highest price that can be obtained after a reasonable time to obtain that price for the property?

(Testimony of Lyman M. King)

A. Well, I never fix definitely in my mind a reasonable time. It would be say 30 or 60 days. It would be something like that because the trend is sometimes up or down.

Q. But the price you fix would be, in your opinion, the price at which the property could be sold or the price that you could find a purchaser willing to pay for this property?

A. Well, of course, I am not looking for purchasers myself.

Q. But I say, when you fix the figure of \$8,912.50, that is what, in your opinion, the property could be [59] sold for within a reasonable time?

A. Yes, sir.

Q. Has there been any change in the demand for property of this nature in the past year?

A. Very considerably so.

Q. And that change has been what?

A. Upwards.

Mr. Nichols: That is all.

Cross-Examination

By Mr. Griffin: Q. Mr. King, you say that you are not engaged in selling ranch property or citrus property at the present time? A. No, I am not.

Q. Have you sold any orange groves or any citrus property in the last year, or two years?

A. Not of my own. I have appraised some that have been sold.

Q. But you have not acted as a real estate agent?

A. I do not act as a real estate agent at all at any time.

(Testimony of Lyman M. King)

Q. And the nature of your business in connection with the Redlands Savings and Loan is mainly in connection with the selling and buying of houses, is that correct?

A. The loaning of money on houses.

Q. And does not involve lending of money on citrus groves?

A. No, sir, except occasionally when there might be a home on a citrus grove. [60]

Q. Now, I think you said something about being an Inheritance Tax Appraiser. How long ago was it that you were acting in that capacity?

A. Well, I resigned, I think, about 8 months ago.

Q. And you have not acted in that capacity since that time?

A. No, sir, except such little matters as were being carried on and I had to finish them out.

Q. Now, do you know of any sales in this particular locality in or near this particular property?

A. Well, I have heard of a few.

Q. You were not a party to them nor did you have any part in the sales, is that correct?

A. That is correct.

Q. Now, does the history, the production history of the grove have anything to do with your arriving at a reasonable value of the property?

A. Yes, indeed, always.

(Testimony of Lyman M. King)

Q. Are you familiar with the production record of this particular property?

A. I have seen the record as it appeared in the statement of fact made by Judge Duffy at the former hearing.

Q. And did you from that record come to any conclusion as to the average production of that grove in any one year, or over a period of years?

A. No, I did not, because looking over the grove it [61] was my judgment that it had not been a fairly representative production.

Q. You mean that in the event the grove was fed heavier in the future that it would still produce more, is that right?

A. I think it will produce more if it is fed intelligently more in the future and there evidently has been something lacking in the past; it probably could have been corrected to some extent. That is my judgment, although I don't put that forward as a statement from an expert orange grower. I have owned several groves but I sometimes think the more I own the less I know.

Q. I suppose you noticed that in 1941-1942 there was quite a heavy crop on that grove, is that correct?

A. I seem to remember that, but I would not say that I definitely do.

Q. And did you happen to remember from the production record as to the yield of the grove last year?

A. Well, if it yielded much last year it was different from most of the groves in the district.

(Testimony of Lyman M. King)

Q. Do you remember as to the production record?

A. Not the crop before this one, no, sir, I don't remember the record.

Q. Now, did you walk over the entire grove recently?

A. Yes, sir, Saturday afternoon.

Q. And did you notice the condition of the grove as to [62] the rear portion of it?

A. Well, I suppose you mean the Lugonia Avenue as the front, then.

Q. That is right. A. I did.

Q. What would you say was the condition of the soil back there?

A. I would say in the upper rear portion very gravelly—very poor. I noticed that when I was there several years ago, too, and I really was surprised that the trees had done as well as they have done up in the most gravelly section of it. They are considerably stunted but yet they had quite a bit of fruit on them.

Q. How many acres would you say were in that portion that you speak of as being considerably stunted?

A. Oh, the whole thing is about 6, isn't it—something less than half an acre.

Q. And then as you came on towards the front of the grove and you got into the Navel trees there what did you find as to the condition of the soil there?

A. Well, it is better than it is at the extreme rear, but it gradually began to get gravelly as you went from the front to the rear.

(Testimony of Lyman M. King)

Q. What did you find was the condition of those Navel trees that were in there?

A. Well, there were hardly any Navel trees in it. Those were the Valencia trees up in that corner. It is what you might call the southwesterly corner of the tract. [63] It was very evident that the wash, as they call it, had gone across the corner of the place.

Q. Now, then, you arrived at a figure of \$8,912.50 without the crop? A. Yes, sir.

Q. Can you tell me just how you arrived at that as far as an acreage proposition is concerned?

A. Yes, I arrived at that on an average of \$1500 an acre for five and seven eighths acres.

Q. Can you tell me how you broke that average up, that \$1500 an acre? What price did you put on the acreage in the rear?

A. Well, I did not, as you say, break it up. I don't know quite what you mean by that, but the great majority of that grove, the greater part of it, the soil is excellent and the trees look fine. If the entire five and seven eighths acres or six acres was like the front of it I would figure that it should, under the present market sell for more than that, and more or less roughly in my mind I reduced the price for the whole by the fact that there was some of it that was not worth very much—that little corner over in there.

Mr. Griffin: That is all.

Mr. Nichols: That is all.

FRED BROCK,

called as a witness by the Petitioner, having been first duly sworn, testified [64] as follows:

Direct Examination

By Mr. Nichols: Q. What is your name?

A. Fred Brock.

Q. Where do you reside? A. Redlands.

Q. What address? A. 533 South Buena Vista.

Q. What is your business or occupation?

A. Orange growing and real estate and dry farming.

Q. How long have you been engaged in the real estate business?

A. Since 1927, off and on during that time.

Q. Do you own some properties? A. Yes, sir.

Q. Are you familiar with the property called the Wumkes grove? A. Yes.

Q. Where is the property that you own with respect to the Wumkes grove?

A. I have one piece about a mile and a half south and west of there and part of another one about a mile and a half northeast of there.

Q. Now, are you familiar with any sales of citrus lands that have occurred in the past six months in the general locality? A. Yes, sir.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and not proper direct examination. It could be offered on cross examination but not on direct.
[65]

Mr. Nichols: I submit that one of the bases for establishing a market value in a locality is other properties of equal values or equal conditions that have been sold in the

(Testimony of Fred Brock)

general locality and within a sufficiently recent time to show that there is a demand and—

Mr. Duffy: Hasn't the Supreme Court decided that sales cannot be shown to show the value on direct examination?

Mr. Nichols: Well, I submit that in the *Alberti* case that sales in the general locality are cited as a criterion for establishing value.

(Argument by counsel.)

By Mr. Nichols: Q. What, if any, sales are you familiar with?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

By Mr. Nichols: Q. During the past 6 months you have been engaged in the real estate business, have you?

A. That is right.

Q. And what, if any, change has there been in the last year as to the demand for citrus properties?

A. A very decided change, more demand now than there is property to supply.

Q. Have you sold more than one citrus property during [66] the past six months? A. Yes.

Q. How many have you sold?

A. Roughly, 50 parcels.

Q. That has been in the general locality of the *Wumkes* property?

A. In the Redlands-Highland district.

Q. In your opinion is there a present demand for the *Wumkes* property? A. Yes.

Q. And, in your opinion, is there a ready market for the sale of the *Wumkes* property? A. Yes.

(Testimony of Fred Brock)

Q. And, in your opinion, what is the ready market and available price for which the Wumkes property could be sold?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial. He has not asked what the reasonable market value is.

Mr. Duffy: The objection is sustained.

By Mr. Nichols: Q. Now, are you familiar with what is termed the market value of property?

A. Yes.

Q. What do you understand the market value of property to be?

A. Well, it is your demand. In other words, your buyer today commits himself as to what he will pay for a piece of property if you can secure that type of property for him.

Q. Is that an immediate sale or within a reasonable time or upon what basis?

A. An immediate sale. [67]

Q. When you say "immediate sale" what do you mean? A. On or before 30 days.

Q. Do you have in mind in fixing market value any conditions as to the use of the property? Do they enter into your fixing the market value of the property?

A. I don't know exactly what you mean.

Q. Well, is market value affected in any respect in your opinion by the purpose or use to which the property can be put?

A. Oh, yes. If it is just vacant land it wouldn't be worth near as much as it would be with citrus on it.

(Testimony of Fred Brock)

Q. Now, the Wunkes property, what, in your opinion, is the best use to which that property can be put?

A. Citrus.

Q. And that is the use that it has been put to and is being put to now? A. Yes.

Q. Do you know of available purchasers for this property? A. Yes.

Q. What, in your opinion, is the present market value of the Wunkes property?

A. With the crop and the equipment, the heating equipment and water stock, \$12,000.

Q. Now, assuming that the heating equipment would not go with the property how would you alter your opinion as to the market value?

A. That [68] would discount the price some. In that vicinity we always consider we need heaters in that area, more so than we do further east of there. It all depends on what the heaters would be worth, and the oil or the oil storage. We base the oil at four cents a gallon and the heaters at about \$1.50 apiece.

Q. And the oil storage about what?

A. \$25.00 per thousand for space.

Q. Do you recall whether there is any oil storage space on this property? A. That I don't know.

Q. Now, if the heaters on the property were not included on your estimate of the market value how would you change your estimate?

A. I would say a thousand dollars.

Q. So that, without the heating equipment you would estimate the property to be what?

A. \$11,000 with the crop without the equipment.

(Testimony of Fred Brock)

Q. Now, do you know of an available purchaser for the property at that price? A. Yes.

Mr. Griffin. Objected to as incompetent, irrelevant and immaterial.

Mr. Duffy: The objection is sustained.

By Mr. Nichols: Q. Would you be willing to guarantee a sale of that property at that price within a period of 30 days?

Mr. Griffin: The same objection, [69]

Mr. Duffy: The same ruling.

By Mr. Nichols: Q. Now, with respect to other properties in this general location how is the Wumkes property located?

A. Location other than has been talked of here before, the southerly portion of it being a fairly sandy streak through there, it is a good average property for that district.

Q. And is the district in which the Wumkes property is located considered a good citrus district?

A. Yes, anything from that point west is always considered a good district, or north, either way.

Q. In your opinion what are citrus properties worth, that is, the market value of citrus properties in this general locality per acre?

A. Well, could I stipulate sales that have been made, that we have actually made?

Q. No, your opinion as to the market value of properties.

A. A similar property, about \$2,000 an acre. We are actually selling up to \$3,000 on the higher quality property.

(Testimony of Fred Brock)

Q. Now, your opinion as to reasonable market value is based on your knowledge of other sales that have been made? A. Yes.

Q. In this general locality? A. Yes.

Q. And how recently?

A. Within the past 60 days.

Mr. Nichols: That is all. [70]

Cross-Examination

By Mr. Griffin: Q. You say that your opinion is based on other sales. Is that the only element that you took into consideration in fixing your opinion of market value?

A. No, it is the condition of the property, the varieties. Location has something to do with it.

Q. Are you familiar with the crop record of this property? A. I have seen the crop record.

Q. Over a period of years? A. Yes.

Q. Do you mean to tell this court that the crop record and production of this grove over a period of years would justify an appraisal of \$2,000 an acre?

A. Buyers in most cases today never question what the best production is. It is "Can I have the property."

Q. Are they interested in speculating on it? Is that the reason they are buying?

A. No. They have surplus money that they want to invest.

Q. They have surplus money they want to invest?

A. That is right.

Q. Do you know for what purpose?

A. Well, where it will draw them a little more than one percent interest and what they are getting in the banks, mainly.

(Testimony of Fred Brock)

Q. And do they take into consideration other reasons [71] besides merely getting one percent on their investment?

A. There has been a trend of going back to the land is why there is quite a demand for properties right now. They feel that is as safe an investment as they can make.

Q. You are selling property, are you, as a real estate man? A. Yes, sir.

Q. And have you been able to compute for these prospective buyers how they are going to make a profit on property buying it at \$2,000 an acre or \$3,000, as you spoke of?

A. Yes, I have always taken records on properties and whether they demand the records or not we have sat down and figured out over the various years the number of boxes and the returns both. We have done that and it is entirely up to them if they want to buy it. Whether it will pay them three percent then or whether it will pay them ten percent it doesn't make any difference to us. We are just acting as brokers spending their money.

Q. A great many of these purchasers that you have met are merely buying with the thought of selling, aren't they, very quickly?

A. No. The government tax prohibits that.

Q. Haven't some of the sales that you have made and noticed where the man bought and then sold for a loss for the purpose of taxation purposes? [72]

A. No.

Q. It has not? A. No.

Q. Now, you say there is a \$3,000 crop that you are figuring in this \$11,000. Is that right?

A. My figure was \$12,000.

(Testimony of Fred Brock)

Q. What crop did you figure into that?

A. I figured \$3,000.

Q. Well, do you think that that \$3,000 is all profit?

A. No, sir.

Q. It costs something to produce something doesn't it?

A. We set aside \$200 a year for upkeep and maintenance.

Q. Doesn't that estimate, with the new pest control coming in, hasn't that gone up to more than \$200 an acre?

A. No. Of course, we have our taxes here cut roughly \$5.00 an acre. I would say \$200 would be more than enough. We have spent less than \$200.

Q. Are you familiar with the production of that grove last year?

A. No, I have not the record for the last year, but I know we were all away under last year.

Q. You know it was a very poor crop last year?

A. Yes.

Q. Now, if you learned that the last year crop was only somewhere around 700 boxes, that grove would [73] take less last year, wouldn't it?

A. That is right.

Q. Haven't groves in that particular area been in what we may say "in and out" groves—one year they produce heavily and another year they drop off?

A. That is characteristic of the Valencia in that particular area. Not to a great extent except a year like last year. I had it myself last year.

Q. Practically everybody over in that area had it last year? A. That is right.

Q. Your Navel tree is very likely, though, a more consistent producer? A. That is right.

(Testimony of Fred Brock)

Q. Do you know what the crop record of that grove averages over a period of years?

A. I have not the figure right in mind, no.

Q. In the event the crop record shows that it ran approximately 3 boxes to the tree a year would you say that it was a marginal producer or a heavy producer?

A. It would not be what we would class as a top notch property, nor would it be what we call rat tail. It is a medium property. I might say this. What I mean by that, we class a grove that will produce 500 boxes to the acre or better, that is what we class as our top grade properties. Anything that goes down to two thousand boxes or in between there—it is 2500 boxes to 10 acres, [74] we will say—that is classed as between that and 5,000 is a medium class, and anything from that point on down is classed as what we call rat tails.

Mr. Duffy: You mean per acre?

A. Yes, 250 to 500 boxes per acre.

Mr. Duffy: And not 2,500 to 5,000?

A. No, that is what we call our medium class.

By Mr. Griffin: Q. Are these persons that make up this demand that you speak of—you say that they have money—are they people that own citrus property or are they new people in the field?

A. Well, we have both. Most of them have a pretty good knowledge of the citrus business. Those that are not in the local area, an out of town area, they have a pretty good knowledge of the citrus business.

Mr. Griffin: That is all.

Mr. Nichols: That is all.

K. C. O'BRYAN,

called as a witness by the Petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nichols: Q. Where do you reside?

A. Redlands.

Q. How long have you lived in that locality?

A. Most of the time since 1926. [75]

Q. What is your present business or occupation?

A. I am with the Southern Citrus Association.

Q. What is that? A. A packing house.

Q. That is located in Redlands? A. Yes.

Q. How long have you been connected with the Southern Citrus Association? A. 7 years.

Q. Do you own any citrus property of your own?

A. Yes.

Q. More than one parcel? A. Yes.

Q. How many parcels do you own?

A. Well, including some partnership parcels, seven.

Q. Seven parcels? A. That is correct.

Q. Are those in the general locality of the Wumkes property? A. Some.

Q. Now, are you familiar with the Wumkes property?

A. I am.

Q. Where is the Wumkes property situated with relation to the citrus properties in Redlands?

A. Well, it is more or less the middle of the Redlands district.

Q. Is it situated in a good or bad citrus district?

A. What is considered a good district.

(Testimony of K. C. O'Bryan)

Q. What is the condition of properties around the Wumkes property?

A. You mean physical condition of the groves in that neighborhood?

Q. Yes. A. Generally good.

Q. How long have you been familiar with the Wumkes [76] property?

A. Since 1936, I believe.

Q. And at that time were you handling the fruit from the property? A. Yes.

Q. And when was the last time that you handled any of the fruit?

A. I am not sure what the last year was.

Q. When you were handling the fruit did you have occasion to go and see the property? A. Yes.

Q. When was the last time that, or how recently did you go and look at this property?

A. Last Saturday.

Q. Has there been any change in the condition of the property from the time you first looked at it until the present time?

A. Yes, a very great improvement.

Q. Are you familiar with other properties in that general locality? A. I am.

Q. And is there at the present time a demand for citrus properties? A. Yes.

Q. Do you know what the term "market value" is, what it implies? A. I think I do.

(Testimony of K. C. O'Bryan)

Q. What, in your opinion, does the term "market value" mean?

A. I would think it would mean the price that a grove could be sold for and a buyer could be found within a reasonable time.

Q. Would that have in mind the purpose for which [77] the property could be used? A. Yes.

Q. Is the locality of the Wumkes property, in your opinion best suited—what is it best suited for?

A. Growing citrus.

Q. The other properties in the immediate locality are used for that same purpose? A. Yes.

Q. Are you familiar with other transactions or sales that have occurred in that locality? A. I am.

Q. Have you formed an opinion as to the market value, reasonable market value of the Wumkes property?

A. I have.

Q. What, in your opinion, is the reasonable market value of that property?

A. I think it is worth \$12,500. However, I come over here prepared to make an offer of \$10,000 for it, all cash.

Mr. Griffin: I move to strike the last part of the statement out as incompetent, irrelevant and immaterial.

Mr. Duffy: The last part may be stricken out.

By Mr. Nichols: Q. In your opinion, the market value of the property is \$12,500? A. I think so.

Q. Is that with or without the crop?

A. With the crop, with the Valencia crop.

Q. What do you estimate the Valencia crop to be [78] worth? A. \$3500.

(Testimony of K. C. O'Bryan)

Q. So that your valuation without the crop at this time is \$9,000?

A. Yes, but I am willing to pay \$10,000 with the crop.

Mr. Duffy: Mr. Witness, you will not volunteer any more information. Let the last part of the answer be stricken out.

By Mr. Nichols: Q. Are you prepared at this time to make a cash offer for the purchase of this property?

A. I am.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial.

Mr. Nichols: At this time I would like to offer proof by a cash offer and I will tender proof of a cash offer in the amount of \$10,000 for this property and tender herewith cash in the amount of \$50 and a certified check in the amount of \$950, being ten percent of the amount of the offer. I am handing that over to you at this time, Mr. Duffy.

Mr. Duffy: I cannot accept anything of that kind.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial.

Mr. Duffy: The objection is sustained. Now, this money is not under my jurisdiction so you better get it away from here as I am not responsible. [79]

Mr. Nichols: If you are refusing to entertain the offer in any way—

Mr. Duffy: I have sustained the objection to the offer.

By Mr. Nichols: Q. Now, Mr. O'Bryan, you have gone over this property on more than one occasion, have you?
A. I have.

(Testimony of K. C. O'Bryan)

Q. What is the condition of the soil on this property?

A. It is in general typical of the district. There is one corner of the grove that is somewhat gravelly which, with organic fertilizer could be probably built up. I know many high producing groves in gravel.

Q. Are there some stunted trees on the property?

A. A few.

Q. And about how many, in your opinion, are there?

A. Oh, probably 40 or 50 that are noticeably stunted, and that many more that are somewhat smaller than they should be for their age to produce well.

Q. When you say they are producing well do you have any opinion as to the number of boxes those stunted trees would produce?

A. I think the smallest ones will probably average about 2 boxes.

Q. About what percentage of the entire grove is occupied by stunted trees? A. 10 or 11 percent.

Q. And the 89 or 90 percent remaining would be in [80] what type of citrus trees?

A. You mean as to size?

Q. As to size and quality.

A. Better than average size.

Q. Now, there has been some testimony that these trees would never produce properly because they were planted too close together. Do you have any opinion as to the distance between trees, that is, the planting distance? A. On that particular property?

Q. Yes.

A. Well, they are not over 20 feet. They may be a little less than 20; they are 18 to 20 feet apart.

(Testimony of K. C. O'Bryan)

Q. Now, is it unusual in citrus groves for trees to be planted 20 feet apart?

A. Not particularly. We have lots of groves planted that close. Some of the best producing groves we pick in our packing plant are planted close, in fact, we are picking on a grove right today which is planted much closer than this one, a 30 acre piece that is going to pick somewhere in the neighborhood of 22,000 boxes of fruit, planted approximately 12 by 21 feet.

Q. The manner in which this property is planted with respect to the distance that the trees are apart, would or would not, in your opinion, hamper or affect the ability to prune or cultivate the property?

A. Well, naturally to get through a close planted [81] grove it is a little closer for tractors, but so far as hampering operations, our highest producing groves in our Redlands area, the trees are close. The fruit has to be sledged out. You cannot go in there with a truck.

Q. Would you say that, taking the average citrus grove in Redlands area, that there was anything unusual in the manner in which the trees are planted as to distance apart on the Wumkes property?

A. Yes, they are slightly closer than most groves, but it is no disadvantage. It is an advantage, a lot of trees to the acre.

Q. And this property is in a good citrus location, is it?

A. Yes.

Q. And its best use is in the citrus growing?

A. That is the best use I know of for it.

Q. And based on the demand that you are familiar with in the locality you fix the market value at \$12,500?

A. Including the crop.

Mr. Nichols: That is all.

(Testimony of K. C. O'Bryan)

Cross-Examination

By Mr. Griffin: Q. Mr. O'Bryan, you said that the small trees in the back, which you, I understand, estimated at about 11 percent of the grove approximately, would average about 2 boxes to the tree?

A. The present crop. [82]

Q. Now, in other years that would drop off, would it?

A. Not necessarily.

Q. Do you think that the crop that is on there now is a big crop or is it not a big crop?

A. I think it is a big crop.

Q. Are you familiar with the history of the grove?

A. Roughly.

Q. Has it been in accordance with the history of the grove a big crop or not?

A. Yes, it is a better crop than—possibly one year it had a better crop, possibly 2 years since I have known it. It had a very long term of very poor crops due to a reason which has now been controlled. That reason was black scale. That grove, in all the years from the first year I knew it back about 1936, was badly infested with black scale and as the years went by it was controlled more or less and the crop went up and down and now that that black scale has been licked there is no reason why that grove should not grow better crops than it is growing today. So far as last year's crop is concerned, black scale, I don't think, had anything to do with that. The light crop last year was due, I think, to—well, the experts say it was due to little moisture content in the sub-soil. The fact that the grove had a light crop in our district last year is no argument [83] against the grove because

(Testimony of K. C. O'Bryan)

some of the best groves that we picked fell down to seven or eight hundred boxes to the ten acres last year. We have one grove that consistently ran eight to ten thousand boxes on a 15 acre piece, which last year we only picked a little over 1200 boxes, so last year is no criterion for groves in our district as a whole in Valencias. Last year we picked a little over thirty percent of a normal crop in Valencias. In Navels a little over forty percent.

Q. Now, you think that the rest of the grove, however, is a better grove from the remaining portion?

A. You mean the grove other than the back corner?

Q. Yes. A. Oh, yes, much better.

Q. And yet the history of the grove has never shown that it is a heavy producer, has it?

A. No. The answer is black scale.

Q. You feel that the black scale has been entirely eradicated?

A. I would call the grove commercially clean. It might be possible to find a stray scale in it here and there.

Q. Won't that back history of production have something to do with the sale price?

A. Yes. However, to a prospective buyer who knows groves and knows how black scale can affect production, I think that he would make allowance for the fact that the [84] back production has not been high.

Q. Do you think there is anything else other than black scale that might be taken into consideration in the low returns from that grove?

A. Yes, low markets, of course, have a bearing on returns as well as production. When you said "return" did you mean money return or fruit return?

(Testimony of K. C. O'Bryan)

Q. Fruit return?

A. Oh, yes, other things than black scale have an effect on the fruiting of a grove.

Q. Do you agree with Mr. Aubrey and Mr. Johnson and Mr. Mehl in reference to these small stunted trees in the rear of that grove?

A. I don't know that they agreed on it. I cannot answer that question unless you make it a little more specific.

Q. Do you agree that those trees are stunted in the rear and very poor producers?

A. I agree that there are some few stunted trees, yes.

Q. And yet you are fixing a value on that property better than \$2,000 an acre over all, is that correct?

A. Yes, including the crop.

Q. Last September you only felt that place was worth \$8,000, didn't you?

A. I believe \$8,000 or \$8,500; I am not sure which it was.

Q. Do you feel that there has been a jump in value since that time?

A. Yes, I think there has [85] been a jump in value as well as in price. Since that time they have made known the fact that our Valencia ceiling would be, roughly, a cent a pound more money than we were sure of at that time, and therefore the money return from that crop and probably from future crops would be greater than we knew at that time.

Q. In other words, the figures—the increase in value is due to an increase in price of oranges, is that right?

A. Partially.

(Testimony of K. C. O'Bryan)

Q. And that is based on the gamble of whether the demand is going to continue on these?

A. Well, that is based on a gamble, yes, insofar as there is a gamble or a hazard in any business or any transaction. We are mighty sure that the national taste for oranges is not going to change.

Q. You are not selling oranges to the general public now, are you? Isn't the majority of your crop going overseas?

A. No.

Q. Don't you have a freeze on the sale of citrus products at the present time to civilians?

A. No.

Q. That is at least in the canned production?

A. No.

Q. Would you say that the major part of the citrus crop at the present time is being consumed in the [86] United States?

A. I would.

Q. Has the expense of production of a crop been increased recently or not?

A. Yes, slightly in the case of a man who does his own work. Somewhat more in the case of a man who hires all his work done.

Q. Has it been increased by reason of red scale?

A. Red scale has been known and fought for all the years of my experience in the business. Red scale is not a new thing although there are more groves in the Redlands area now where it is necessary to give them red scale treatment than in the past.

(Testimony of K. C. O'Bryan)

Q. In this grove—if this grove did not have the crop on it at the present time would that materially affect the sale price of the grove?

A. In general, or to me?

Q. In general.

A. Yes, the grove without the crop would not sell for as much money as it would with the crop.

Q. What would you say would be a reasonable market value of the grove without the crop? A. \$9,000.

Q. The price you fixed on there is not the entire value of the crop being taken off of the price that you had fixed for both the crop and the grove, is it?

A. Ask that question again.

Q. You have not deducted the entire value of the crop from your price, have you? A. What price? [87]

Q. \$12,500.

A. I have not deducted the entire value of the crop?

Q. That is right.

A. I think the place is worth, the place and the crop is worth \$12,500. I think the crop is worth \$3,500. I think the place without the crop is worth the difference between the two figures.

Q. You feel if you asked somebody out there and they looked at it without the crop on it that it would still sell for \$9,000? A. Yes.

Mr. Griffin: That is all.

Mr. Nichols: That is all.

TED PRATT,

called as a witness by the petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nichols: Q. State your name.

A. Ted Pratt.

Q. Where do you reside? A. Pomona.

Q. What is your business or occupation?

A. I work in the field for the Orange Belt Fruit Distributors in Pomona.

Q. What is the Orange Belt Fruit Distributors?

A. They are packers and shippers of citrus fruits as well as growers. [88]

Q. What acreage do they own in the way of citrus acreage if you know? A. About 550.

Q. Is it necessary for you, in the performance of your duties with them, to inspect properties in the Redlands district? A. Frequently.

Q. And are you familiar with the property called the Wumkes property? A. I am.

Q. When did you go over that property?

A. Yesterday.

Q. Are you familiar with the demand for property in the general Redlands area? A. Well, yes.

Q. Now, did you go over the entire Wumkes property?

A. Yes, sir.

Q. In your opinion in what type of location is the Wumkes property, having in mind the character of the other properties in that general location?

A. I would say it is a very fair district.

Q. Would you say it is well located with respect to the other properties? A. Yes.

(Testimony of Ted Pratt)

Q. What, in your opinion would be the quality of citrus properties in that general location?

A. Very good.

Q. When you went over the property did you form any general opinion as to the market value of the Wumkes property?

A. I did.

Q. What was your opinion as to the reasonable market [89] value?

A. With the crop, \$12,000.

Q. And without the crop, how much?

A. \$9,000.

Q. You estimated the crop at—

A. I estimated the crop at 1500 boxes. It might be a little more than that in dollars and cents.

Q. When you testify as to the reasonable market value, what do you mean?

A. Well, the use of the land for its most practical purpose and the value of the trees and water stock. It is not its potency, particularly, but its production. I investigated the crop record.

Q. And is it your opinion as to the sale of the property within a reasonable time, that is your estimate of the market value is based on the price that can be obtained for it within a reasonable time?

A. Yes, sir.

Mr. Griffin: Objected to as being leading and suggestive.

Mr. Duffy: Well, I think he answered it.

By Mr. Nichols: Q. Now, did you look at the property with respect to the distance at which the trees were planted apart?

A. Yes, I did. I did not step them off, but I know they were close, 20 feet or slightly less.

(Testimony of Ted Pratt)

Q. In your opinion would the fact that the trees were close together lessen the value of the property? [90]

A. No, not in my opinion. I prefer heavy planting.

Q. Do you own any citrus properties yourself?

A. Yes, I have two.

Q. Do you take care of them yourself? A. Yes.

Q. What, in your opinion, would be the generally accepted distance at which trees would be planted in this area?

A. That is a hard question for me to answer. I will say that in our district the average is 22 feet.

Q. From your observation of trees planted in this area would you say it would be anything unusual to find property where the trees were planted the same distance as the Wumkes property? A. Not at all.

Q. In your opinion, would the fact that the trees were planted as they are on the Wumkes property lessen the production of the property?

A. No, sir, not at all.

Q. Would it make the property any less desirable?

A. None at all.

Cross-Examination

By Mr. Griffin: Q. How long have you been with the Orange Belt Fruit Distributors? A. 3 years.

Q. What was your occupation before that?

A. Salesman. [91]

Q. What line of business?

A. Automobiles, during which time I owned a grove, however.

Q. Over what period of time was that?

A. 1930 to 1940.

Q. About 10 years? A. Yes.

(Testimony of Ted Pratt)

Q. What is your capacity now?

A. Well, I am licensed as Growers' Service Advisor. My principal work is to follow after their properties and to inspect them and to appraise crops and groves for our growers, and when I say "appraise them" I don't mean for the purpose of sale or for buying them but for company protection in advances on various crops.

Q. Do you have groves, that is, do you have members who have groves in the Redlands district?

A. No, we have none.

Q. Then, for what purpose were you in the Redlands district?

A. I get into the Redlands district very frequently to look at crops.

Q. That is for the purpose of buying crops?

A. Occasionally, or advancing money to growers.

Q. That is, advance money to growers upon the crop that is then on the trees? A. Yes.

Q. Do you know anything at all about the sales of property in Redlands or in the Redlands district?

A. Only what my investigation has been through various agencies such as real estate firms and [92] packing houses where I have made inquiries.

Q. You have not conducted any sales yourself?

A. No.

Q. Or been a party to any sales? A. No.

Q. I understand you to say that you had investigated the crop record of this particular grove?

A. That is correct, yes, sir.

(Testimony of Ted Pratt)

Q. What did you find from that crop record?

A. I found that for a period of 6 years including the crop as I estimate it on the trees today, the grove produced between \$13,000 and \$14,000, provided the estimate of this year's crop is reasonably accurate.

Q. Could you give me that in boxes?

A. No, I couldn't. I merely looked at the record, so I couldn't do that without looking at it.

Q. The crop record is made up in amounts?

A. It is made up both in boxes and amounts, but I cannot call them from my mind.

Q. Did you walk over the grove? A. Yes, sir.

Q. Would you say that grove was a heavy producer?

A. Not right at the present time, I wouldn't. I would say it is, potentially the grove is a heavy producer, that is, that part of it, those trees in the back, which some of it should come out but the remainder of the grove is potentially a good producer. [93]

Q. There are some trees in the back that you feel are a detriment?

A. I would say that less than half of them are badly stunted—not badly stunted but possibly a tree that would seem to me would be 12 or 14 years old is possibly 16 or 17 years old. They are pretty healthy now. They are a good color and a fairly good crop.

Q. Do you feel that that grove is worth \$2,000 an acre? A. With the crop?

(Testimony of Ted Pratt)

Q. No, without the crop.

A. No, I did not make such a statement.

Q. I will ask you do you feel that?

A. No, I say that the crop—with the crop it is worth \$2,000 an acre.

Q. The value of this half acre in the back has no value at all, has it? A. Yes, it has.

Q. What would you say is the value?

A. I think there is no question but what those trees can be improved. They are improving all the time from the history I get.

Q. You don't feel that these trees should be taken out? A. Oh, there are a few.

Q. How many?

A. Oh, maybe 5 or 6 trees all together.

Q. Then your former statement of a half acre is not correct?

A. I said there were a half acre of [94] stunted trees but a few should come out.

Q. You don't feel that all of them should come out?

A. By no means. If that grove was properly cared for and irrigated more frequently in the lighter soil it would do a tremendous amount of good.

Q. Do you know how much water it has on it?

A. I was told how much water it had, but I don't recall offhand, but it was adequate. I was told the num-

(Testimony of Ted Pratt)

ber of shares and also the number of inches and the frequency with which water in those amounts were given.

Q. How many times did you go over this property?

A. One time.

Q. How long were you in the grove?

A. Oh, possibly 2 hours.

Q. Who was with you? A. I was by myself.

Q. When was that that you went in the grove?

A. Yesterday.

Q. You had never seen the grove before?

A. Never.

Q. Had you ever been in that immediate vicinity before?

A. I have driven the Redlands area many, many times. I am not familiar with the groves by name.

Q. I mean in that vicinity.

A. I have been on the same street, yes. [95]

Q. Your particular position is to recommend the advancement of money or the payment of money for a crop, is that correct?

A. No. I do general field work, but if the occasion arises, if the company desires an appraisal either on crops or groves I am the one that is sent out to do it.

Q. Isn't that usually for the purpose of advancement of money?

A. What they ask me for is the appraisal or the crop estimate. I have nothing to do with the financial end of the business.

(Testimony of Ted Pratt)

Q. Don't you take into consideration in determining what a grove is worth as to the amount of return that that grove will bring?

A. I certainly do, yes, sir.

Q. And didn't you—don't you somewhat go on the past history of the grove? A. I certainly do.

Q. You don't expect miracles in a year or two, do you, in change?

A. No, but I would certainly feel that a grove that would net ten percent on \$60,000 for six years should be worth \$9,000, and if you took \$200 an acre out for operation, as near as I could figure that is what you would have left.

Q. That has not been the back history of the grove, has it?

A. I have only had the history for the last six years. Incidentally, two very poor years. [96]

Q. And two good years?

A. Yes, two good years. I understand it had good years previously. That I don't know. The way the grove looks today and the amount of money that it has returned over this 6 year period, allowing \$200 per acre for care, I think it is a good \$9,000 investment without the crop.

Mr. Griffin: That is all.

PETER J. WUMKES,

called as a witness by the Petitioner, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nichols: Q. Dr. Wumkes, you formerly were the owner of the property that we have called the Wumkes property? A. Yes.

Q. You sold that to Mr. and Mrs. Powell?

A. Yes, sir.

Q. What was the sale price of that property and when did you sell it to them?

A. The offer was made to me signed by Mr. Powell—

Q. Just tell me when you sold it.

A. \$13,500 was called for—\$2500 down payment.

Q. When was this when it was sold?

A. The summer of 1937 or 1938; I don't recall when.

Q. Now, you are familiar with properties in the [97] general locality of this property?

A. Yes, I lived there for 5 years.

Q. Are you familiar with the market value of properties in that area at this time? A. Yes.

Q. What, in your opinion, is the market value of this property?

A. Well, I offer to take the property back—

Q. Just answer the question please. What, in your opinion, is the market value of this property?

A. I believe that the property there is in direct line with what has been testified today, \$12,000 or \$12,500. I believe there is a little something more of crop there than has been testified to.

(Testimony of Peter J. Wumkes)

Q. In your opinion, what is the present market value of this property?

A. I would say as an investment it should show adequate returns—

Mr. Griffin: I object to that.

Mr. Nichols: All I want is the amount.

A. I would say somewhere between \$13,000 and \$15,000. \$2,000 to \$2,500 per acre.

Q. Would you be willing to take this property and cancel the indebtedness that you hold against it?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial.

Mr. Duffy: The objection is sustained.

Mr. Nichols: That is all. [98]

Cross-Examination

By Mr. Griffin: Q. What is your business or occupation or profession?

A. Well, I have been rather free lancing it for the last 2 or 3 years. I have retired from dentistry.

Q. You were a dentist? A. Yes, sir.

Q. You have retired from that? A. Yes, sir.

Q. You lived for a time in Redlands? A. Yes.

Q. And while there what was your occupation?

A. I was orange grower and farmer.

Q. Did you have any other occupation?

A. No, essentially not. I had other interests, but it did not require any of my time.

Q. Then you have left Redlands, have you?

A. Yes.

(Testimony of Peter J. Wumkes)

Q. Where are you living now?

A. I am spending most of my time—some time in Pomona and a considerable time in Los Angeles.

Q. What is your occupation there?

A. Well I am more or less free lancing. I am not employed at the moment. I have been doing some war work, functioning with such capacity as I could, but at the moment I am not employed.

Q. Do you own any other citrus properties in or about Redlands?

A. No, I have no interest in Redlands other than my interest in the equity in [99] this property.

Q. You have been spending most of your time in and around Los Angeles and Pomona, is that correct?

A. Yes.

Q. How much time have you spent in and around Redlands in the last 6 months?

A. I have been there on two occasions. I was there last Thursday and I was there yesterday.

Q. Those were the only occasions you have been in Redlands?

A. Within the last 6 months, yes. It has been the last time in nearly 3 years that I have been there.

Q. How many times have you been in Redlands the last year?

A. Just the twice, last Thursday and yesterday.

Mr. Griffin: That is all.

Mr. Nichols: That is all.

Petitioner rests.

Debtor rests.

[Endorsed]: No. 10945. United States Circuit Court of Appeals for the Ninth Circuit. James Goodwin Powell and Anna Strachan Powell, husband and wife, Appellants, vs. Peter J. Wumkes, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed December 18, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
Southern District of California
Central Division

No. 36775-C

In the Matter of

JAMES GOODWIN POWELL and
ANNA STRACHAN POWELL,
husband and wife,

Debtors.

STATEMENT OF POINTS ON APPEAL

To the Above Honorable Court:

Appellants hereby designate the following points upon which they intend to rely upon said appeal, as follows:

I.

That the Honorable District Court of the United States erred in vacating, setting aside and annulling the Order of the Conciliation Commissioner-Referee determining value of debtors real property, dated June 21, 1944.

II.

That the decision of the District Court of the United States was contrary to the law made and propounded for such matters.

III.

That the District Court admitted and considered improper and illegal evidence in the making of said decision, and each of them, to-wit, the affidavits and offers to purchase of Donald D. Wyllie and L. A. Turner, and others.

Dated this 27 day of December, 1944.

H. R. Griffin

Attorney for the Debtors and Appellants.

[Endorsed]: Filed Dec. 29, 1944. Paul P. O'Brien,
Clerk.